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UNITED STATES

MINERAL LANDS;

LAWS GOVERNING THEIR

OCCUPANCY AND DISPOSAL;

DECISIONS OF

FEDERAL AND STATE COURTS IN CASES ARISING THEREUNDER; AND REGULATIONS AND RULINGS OF THE LAND DEPARTMENT IN CONNECTION THEREWITH;

WITH

FORMS, GLOSSARY AND RULES OF PRACTICE.

BY HENRY N. COPP.

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PREFACE.

REVIEW OF FEDERAL LEGISLATION.

THE motive underlying the earliest congressional legislation touching the public mineral lands was to secure a revenue therefrom. To this end the system of leasing the lead and copper mines was adopted in 1807, with its attendant agencies, accountings, etc. After a trial of nearly forty years the system was pronounced a failure, and in 1846 the mines were offered at sale, with a preference right in those who had leases or were in the occupation of the mines. When the gold mines of California were discovered, and the varied mineral wealth of the Pacific coast was brought to the attention of Congress, several revenue bills were introduced, at different times, and earnestly debated. But the notorious failure of the lease system in the Mississippi Valley, and the difficulties in the way of securing a revenue otherwise, gave success to the friends of free mining in 1866.

Except in a few states, the object of congressional legislation, since 1866, has been to prevent the disposal of mineral lands to states and railroads, or in large quantities to individuals. Exploration of hidden mines is encouraged, and no efforts are used to compel miners to expend money in securing government title. The mining law of May 10, 1872, is essentially a poor man's law, and has been the source of incalculable wealth to the country, and indirectly of vast revenue to the government.

I. RESERVATIONS.

Continental Congress.—The ordinance of the Revolutionary Congress of May 20, 1785, reserved "one-third part of all gold, silver, lead and copper mines, to be sold or otherwise disposed of as Congress shall hereafter direct." And in the grant or patent prescribed by the act, the wording is "excepting and reserving one-third part of all gold, silver, lead and copper mines within the same for future sale or disposition." (Public Lands, &c. Part I. 13, 14: Yale 325.) This ordinance continued in force until the Constitutional Congress in 1789.

First Congress.—The plan for the disposition of the public lands reported by Alexander Hamilton in July, 1791, is silent on the subject of mineral lands. (1 American State Papers 4, 5.)

Lead Mines.—In many instances from 1807, where land was authorized to be sold in particular sections of the country, lead mines were reserved from sale; and by the act of March 3, 1807, the leasing of lead mines for a period not exceeding five years was authorized, and a grant of land containing a lead mine, discovered before the sale, was declared to be fraudulent and void. In United States *vs.* Gratiot (14 Peter 526), the Supreme Court held that Congress has the

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power to lease as well as to sell the public lands. By the act of March 3, 1849, the powers of the Secretary of the Treasury over lead and other mines were transferred to the head of the Home (Interior) department created by that act.

Pre-emption Laws.—The tenth section of the general pre-emption law of 1841 excluded from its operation "all lands on which are situated any *known* salines or minerals." In nearly all the pre-emption acts prior thereto, minerals were reserved. In the several pre-emption acts relating to California, special care seems to have been taken to prevent the appropriation of mineral lands by settlers. The act of July 23, 1866, to quiet land titles in California, further protected mineral lands in that state. The Oregon Donation Act also excluded mineral lands from its operation.

Railroad Grants.—In the earlier grants to aid railroads, mineral lands are not mentioned in terms; a general clause is inserted excepting all lands reserved for any purpose or by any act of Congress. In the renewal of the railroad grants in Alabama, by act of April 10, 1869 (16 Stats. 45), mineral lands are excluded. In the grant in aid of the Iron Mountain and St. Louis railroads (July 4, 1866, 14 Stat. 83), mineral lands not coal and iron are excepted. In this latter form the mineral lands have, since 1864, been excluded from railroad grants in the mining states and territories.

The acts of July 1, 1862, and July 2, 1864, which donated nearly 100,000,000 acres to railroad corporations, gave the coal and iron lands within their limits, but excepted other mineral lands from the grants.

In the act of July, 1862, the following is the excepting clause: "*Provided*, That all mineral lands shall be excepted from the operation of this act: but where the same shall contain timber, the timber thereon is hereby granted to said company."

In the act of July 2, 1864, section 4 contains this language: "* * And the term 'mineral land,' wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any Government reservation, or mineral lands, or the improvements of any bona fide settler or [on] any lands returned and denominated as mineral lands, and the timber necessary to support his said improvements as a miner, or agriculturist, to be ascertained under such rules as have been or may be established by the Commissioner of the General Land Office, in conformity with the provisions of the pre-emption laws: *Provided*, That the quantity thus exempted by the operation of this act, and the act to which this act is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agriculturist, and such quantity for each settler who claims as a miner, as the said Commissioner may establish by general regulation: *Provided, also*, That the phrase 'but where the same shall contain timber, the timber thereon is hereby granted to said company,' in the proviso to said section three, shall not apply to the timber growing or being on any land farther than ten miles from the centre line of any one of said roads or branches mentioned in said act, or in this act."

State Grants.—In the earlier Congressional grants of land to states, minerals were not mentioned in terms. A general exception was made of all reserved lands. In the river improvement grants in Iowa and Wisconsin, there was no reservation of mineral lands, but in the grants to aid the ship canals in Michigan (March 3, 1865, April 10, 1866, and July 3, 1866), mineral lands were excluded.

The internal improvement, swamp and educational grants, do not mention mineral lands until after 1860, so far as observed. The agricultural college act of July 2, 1862, excluded "mineral lands."

In the acts admitting states into the Union, mineral lands, as a rule, are not particularized. Only in those states notoriously rich in minerals, like California, are the mineral lands noticed prior to 1860.

II. TRESPASS.

Digging for minerals on the public domain, prior to the act of July 26, 1866, was a trespass, entitling the government to damages, and was such a waste as could be restrained by an injunction.

The Illinois Lead Case.—Upon the construction of the fifth section of the act of March 3, 1807 (2 Stats. 448), and the act of June 26, 1834 (4 Stats. 686), the Supreme Court decided the case of Gear, holding the defendant guilty of trespass in mining for lead upon the public land in Illinois, and enjoining him from the commission of waste. (3 How. 120.)

The case of Gear was affirmed in Cotton *vs.* The United States (11 How. 229), where the principle was extended or applied to an action of trespass for cutting timber upon the public land. As the owner of the land, it was the government's right to protect its property in the same manner as an individual would. On these questions the inquirer may consult U. S. *vs.* Schuler (6 McLean 28).

The New Almaden Quicksilver Case.—An implied license from the government to mine upon the public land by reason of its indulgence, if not direct encouragement, was denied in the case of the United States *vs.* Parratt, involving title to the New Almaden mine in California. See U. S. *vs.* Castillero, 2 Black's Supreme Court Reports for 1862, wherein this mine was also involved.

III. FREEDOM AND SALE.

The act of July 11, 1846 (9 Stats. 36), authorized the sale of the reserved mineral lands in the states of Illinois and Arkansas, and the territories of Wisconsin and Iowa, but still excepted the lead mines from pre-emption. The reserved mineral lands in Missouri had shortly before been offered at sale. This act acknowledged the failure of the lease system. In the following year (1847) the mineral lands in Michigan were offered at sale. The act of September 26, 1850, apparently ended the distinction between mineral and agricultural lands in Michigan and Wisconsin. It enacted that the mineral lands therein "shall be offered at public sale in the same manner and be subject to the same minimum price and the same rights of pre-emption as other public lands of the United States."

The act of July 26, 1866, threw open the mineral lands of the United States to exploration and occupation, and it was thereafter no longer a trespass to dig ore or engage in mining operations on the

public domain. The acts amendatory of this liberal law, including the Sutro Tunnel grant, will be found elsewhere in this volume.

OBJECT OF THIS WORK.

This book purports to give the legal status of the mineral lands be longing to the United States at date of going to press. The subject is continued in Copp's *Land Owner*, Vol.. VII., a monthly publication. Those who desire to follow the development of the mining laws since 1874, the date of Copp's U. S. Mining Decisions, will be able to do so in Vols. 1 to 6 of the *Land Owner*. A list of patents for mining claims, issued to date of publication, can be found in Copp's "Hand Book of Mining Law."

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Acknowledgments are due for the valuable suggestions of Curtis W. Holcomb, Chief Clerk of the General Land Office, and Ellery C. Ford, Attorney-at-Law, Washington, D. C., formerly head of the mining division of the General Land Office.

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SEC. 2318. MINERAL LANDS RESERVED.

In all cases, lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

SEC. 2319. MINERAL LANDS OPEN TO PURCHASE BY CITIZENS.

All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free

and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States, and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.

SEC. 1 of the act of 1872, is the same as the above.

SEC. 1 of the act of 1866, is as follows: SEC. 1. That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining-districts, so far as the same may not be in conflict with the laws of the United States.

SEC. 2320. LENGTH OF MINING-CLAIMS UPON VEINS OR LODES.

Mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining-claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end-lines of each claim shall be parallel to each other.

SEC. 2 of the act of 1872 is the same as the above.

SEC. 4 of the act of 1866 is as follows: SEC. 4. That when such location and entry of a mine shall be upon unsurveyed lands, it shall and may be lawful, after the extension thereto of the public surveys, to adjust the surveys to the limits of the premises, according to the location and possession and plat aforesaid; and the surveyor-general may, in extending the surveys, vary the same from a rectangular form to suit the circumstances of the country, and the local rules, laws, and customs of miners: *Provided*, That no location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth, with all its dips, variations, and angles, together with a reasonable quantity of surface for the convenient working of the same, as fixed by local rules: *And provided further*, That no person may make more than one location on the same lode, and not more than three thousand feet shall be taken in any one claim by any association of persons.

SEC. 2321. PROOF OF CITIZENSHIP.

Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

The last clause of Sec. 7 of the act of 1872 is the same as the above, with this addition: "and nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever," which language is now in the last clause of Sec. 2326.

SEC. 2322. LOCATORS' RIGHTS OF POSSESSION AND ENJOYMENT.

The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim, to enter upon the surface of a claim owned or possessed by another.

SEC. 3 of the act of 1872 is the same as the above.

SEC. 2323. OWNERS OF TUNNELS, RIGHTS OF.

Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

SEC. 4 of the act of 1872 is the same as the above.

SEC. 2324. MINERS' REGULATIONS; EXPENDITURES AND IMPROVEMENTS.

The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining-claims hereafter made

shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein, until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be opened to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if, at the expiration of ninety days after such notice in writing or by publication, such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

SEC. 5 of the act of 1872, substitutes the words; "each year for each hundred feet," instead of the words, "by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter," in the clause relating to expenditures, otherwise the section is the same.

An act approved March first, eighteen hundred and seventy-three, amended Sec. 5, of the act of 1872, as follows: "That the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the tenth day of June, eighteen hundred and seventy-four."

An act, approved June six, eighteen hundred and seventy-four, further extended the time for first annual expenditure to the first day of January, eighteen hundred and seventy-five.

See other amendatory acts hereafter.

SEC. 2325. PATENTS FOR MINERAL LANDS, HOW OBTAINED.

A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land-office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground,

and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat, previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land-office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land-office, upon the filing of such application, plat, field-notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended, or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land-office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

SEC. 6 of the act of 1872 is the same as the above.

SEC. 2 of the act of 1866 reads thus: SEC. 2. That whenever any person, or association of persons, claim a vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local custom or rules of miners in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant, or association of claimants, to file in the local land-office a diagram of the same, so extended laterally or otherwise as to conform to the local laws, customs, and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode with its dips, angles, and variations to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition.

SEC. 3 of the act of 1866 is as follows: SEC. 3. That upon the filing of the diagram as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the register of the land-office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the surveyor-general, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the register of the land-office shall transmit to the General Land-Office said plat, survey, and description, and a patent shall issue for the same

thereupon. But said plat, survey, or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued.

SEC. 2326. ADVERSE CLAIM, PROCEEDINGS ON.

Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land-office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended, or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified to by the register to the Commissioner of the General Land-Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court, that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land-Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining-claim to any person whatever.

SEC. 7 of the act of 1872 is the same as the above, except the omission of the clause relative to proof of citizenship, which is identical with Sec. 2321.

SEC. 6 of the Statute of 1866 is as follows: SEC. 6. That whenever any adverse claimants to any mine, located and claimed as aforesaid, shall appear before the approval of the survey, as provided in the third section of this act, all proceedings shall be stayed until a final settlement, and adjudication in the courts of competent jurisdiction, of the rights of possession to such claim, when a patent may issue as in other cases.

SEC. 2327. DESCRIPTION OF VEIN-CLAIMS ON SURVEYED AND UNSURVEYED LANDS.

The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the bound-

aries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

SEC. 8 of the act of 1872 is the same as the above.

SEC. 2328. PENDING APPLICATIONS; EXISTING RIGHTS.

Applications for patents for mining-claims, under former laws now pending, may be prosecuted to a final decision in the General Land-Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining-claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter, where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

SEC. 9 of the act of 1872, reads thus: SEC. 9. That sections one, two, three, four and six of an act entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July twenty-sixth, eighteen hundred and sixty-six, are hereby repealed, but such repeal shall not affect existing rights. Applications for patents for mining-claims now pending may be prosecuted to a final decision in the General Land-Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this act; and all patents for mining-claims heretofore issued under the act of July twenty-sixth, eighteen hundred and sixty-six, shall convey all the rights and privileges conferred by this act where no adverse rights exist at the time of the passage of this act.

SEC. 2329. CONFORMITY OF PLACER-CLAIMS TO SURVEYS; LIMIT OF.

Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

The first clause of Sec. 12 of the act of 1870, 16 U. S. Stat. 217, was substantially the same as the above. [See note to Sec. 2330.]

See §§ 2319, 2331, 2334.

SEC. 2330. SUBDIVISION OF TEN-ACRE TRACTS; LIMIT OF PLACER LOCATIONS.

Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer-claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona-fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona-fide settler to any purchaser.

SEC. 12 of the act of 1870, is as follows: SEC. 12. That claims usually called "placers," including all forms of deposit excepting veins of quartz, or other rock in place, shall be subject to entry and patent under this act, under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims: *Pro-*

vided, That where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands, no further survey or plat in such case being required, and the lands may be paid for at the rate of two dollars and fifty cents per acre: *Provided further*, That legal subdivisions of forty acres may be subdivided into ten-acre tracts; and that two or more persons or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof: *And provided further*, That no location of a placer-claim, hereafter made, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona fide* settler to any purchaser.

SEC. 2331. SURVEY OF PLACER-CLAIMS; LIMITATION OF.

Where placer-claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining-claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision, a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or pre-emption purposes.

SEC. 10 of the act of 1872 is as follows: SEC. 10. That the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July ninth, eighteen hundred and seventy, shall be and remain in full force, except as to the proceedings to obtain a patent, which shall be similar to the proceedings prescribed by sections six and seven of this act, for obtaining patents to vein or lode claims; but where said placer-claims shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining-claims hereafter located shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant, but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; *Provided*, That proceedings now pending may be prosecuted to their final determination under existing laws; but the provisions of this act, when not in conflict with existing laws, shall apply to such cases; *And provided also*, That where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, said fractional portion of agricultural land may be entered by any party qualified by law for homestead or pre-emption purposes.

SEC. 16 of the act of 1870 reads thus: SEC. 16. That so much of the act of March third, eighteen hundred and fifty-three, entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights, and for other purposes," as provides that none other than township lines shall be surveyed where the lands are mineral, is hereby repealed. And the public surveys are hereby extended over all such lands; *Provided*, That all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of the claimants; *And provided further*, That nothing herein contained shall require the survey of waste or useless lands.

SEC. 2332. EVIDENCE OF POSSESSION TO ESTABLISH RIGHT TO PATENT.

Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by

the statute of limitations for mining-claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining-claim or property thereto attached prior to the issuance of a patent.

SEC. 13 of the act of 1870, reads: SEC. 13. That where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the State or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim: *Provided however*, That nothing in this act shall be deemed to impair any lien which may have attached in any way whatever to any mining-claim or property thereto attached prior to the issuance of a patent.

SEC. 2333. PROCEEDINGS FOR PATENT FOR PLACER-CLAIM, ETC.

Where the same person, association or corporation is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer-claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer-claim, or any placer-claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim which does not include an application for the vein or lode claim, shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.

SEC. 11 of the act of 1872, is identical with the above, including the words following, in parenthesis, after the words "and in such case," (subject to the provisions of this act and the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July ninth, eighteen hundred and seventy,) in place of the words, "subject to the provisions of this chapter."

SEC. 2334. SURVEYOR-GENERAL TO APPOINT SURVEYORS OF MINING CLAIMS.

The surveyor-general of the United States may appoint in each land-district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining-claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer-claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable

rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter, and, in case of excessive charges for publication, he may designate any newspaper published in a land-district where mines are situated, for the publication of mining-notices in such district, and fix the rates to be charged by such paper; and to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land-office, which statement shall be transmitted with the other papers in the case to the Commissioner of the General Land-Office.

SEC. 12 of the act of 1872, was the same as the above, with the following addition: "The fees of the register and the receiver shall be five dollars each for filing and acting upon each application for patent or adverse claim filed, and they shall be allowed the amount fixed by law for reducing testimony to writing, when done in the land-office, such fees and allowances to be paid by the respective parties; and no other fees shall be charged by them in such cases. Nothing in this act shall be construed to enlarge or affect the rights of either party in regard to any property in controversy at the time of the passage of this act, or of the act entitled 'An act granting the right of way to ditch and canal owners over the public lands, and for other purposes,' approved July twenty-sixth, eighteen hundred and sixty-six, nor shall this affect any right acquired under said act; and nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the act entitled 'An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada,' approved July twenty-fifth, eighteen hundred and sixty-six."

SEC. 2335. VERIFICATION OF AFFIDAVITS, ETC.

All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land-district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided, on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land-office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

SEC. 13 of the act of 1872 is the same as the above.

SEC. 14 of the act of 1870 reads thus: SEC. 14. That all *ex parte* affidavits required to be made under this act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land-district where the claims may be situated.

SEC. 2336. WHERE VEINS INTERSECT, ETC.

Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection, but the subsequent

location shall have the right of way through the space of intersection, for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

SEC. 14 of the act of 1872 is identical with the above.

SEC. 2337. PATENTS FOR NON-MINERAL LANDS, ETC.

Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.

SEC. 15 of the act of 1872 is the same as above.

SEC. 2338. STATE OR TERRITORIAL LEGISLATION CONCERNING MINERAL LANDS.

As a condition of sale in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

Sec. 5 of the act of 1866, is identical with the above.

SEC. 2339. VESTED RIGHTS TO USE OF WATER; RIGHT OF WAY FOR CANALS, ETC.

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 9 of the act of 1866, is the same as above.

SEC. 2340. PATENTS, ETC., SUBJECT TO VESTED WATER-RIGHTS.

All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water-rights, or rights to ditches and reservoirs used in connection with such water-rights, as may have been acquired under or recognized by the preceding section.

SEC. 17 of the act of 1870, reads thus: SEC. 17. That none of the rights conferred by sections five, eight and nine of the act to which this act is amendatory shall be abrogated by this act, and the same are hereby extended to all public lands affected by this act; and all patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water-rights, or rights to ditches and reservoirs used in connection with such water-rights as may have been acquired under or recognized by the ninth section of the act of which this act is amendatory. But nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the "Act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-fifth, eighteen hundred and sixty-six.

SEC. 2341. NON-MINERAL LANDS OPEN TO HOMESTEADS.

Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this title relating to "Homesteads."

SEC. 10 of the act of 1866, is substantially the above with the addition of the following language, after the words "one hundred and sixty acres:" "Or said parties may avail themselves of the provisions of the act of Congress, approved May twentieth, eighteen hundred and sixty-two, entitled 'An act to secure homesteads to actual settlers on the public domain,' and acts amendatory thereof."

SEC. 2342. MINERAL LANDS, HOW SET APART AS AGRICULTURAL.

Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

SEC. 11 of the act of 1866, is as above.

SEC. 2343. POWER OF THE PRESIDENT TO PROVIDE DISTRICTS AND OFFICERS.

The President is authorized to establish additional land-districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

SEC. 7 of the act of 1866, is identical with the above.

SEC. 2344. PROVISIONS OF THIS CHAPTER NOT TO AFFECT CERTAIN RIGHTS.

Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled, "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in

the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

For SEC. 17 of the act of 1870, see note to Sec. 2340, *ante*.

SEC. 8 of the act of 1866, reads: SEC. 8. That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

The last clause of SEC. 16 of act of 1872, reads as follows: "*Provided*, That nothing contained in this act shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws."

SEC. 2345. MINERAL LANDS IN CERTAIN STATES EXCEPTED.

The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions in like manner as before the tenth day of May, eighteen hundred and seventy-two; and any *bona fide* entries of such lands within the States named, since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption, as other public lands.

Act of Feb. 18, 1873, is similar to the above.

SEC. 2346. WHAT GRANTS NOT TO INCLUDE MINERAL LANDS.

No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which, in all cases, are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

Act of Jan. 30, 1865, 13 U. S. Stat. 567, is identical with the above.

SEC. 2347. ENTRY OF COAL-LANDS.

Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter by legal subdivisions any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre, for such lands where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

SEC. 1, act of 1873, is the same as the above.

SEC. 2348. PRE-EMPTION OF COAL-LANDS.

Any person or association of persons severally qualified as above provided, who have opened and improved, or shall hereafter open and

improve any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference-right of entry under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such associations may enter not exceeding six hundred and forty acres, including such mining improvements.

SEC. 2, act of 1873, is the same as the above.

SEC. 2349. PRE-EMPTION OF COAL-LANDS; WHEN CLAIMS TO BE PRESENTED.

All claims under the preceding section must be presented to the register of the proper land-district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

SEC. 3, act of 1873, is to the same effect.

SEC. 2350. ONLY ONE ENTRY ALLOWED.

The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons, any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such section shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

SEC. 4, act of 1873, is the same as the above.

SEC. 2351. CONFLICTING CLAIMS.

In case of conflicting claims upon coal-lands where the improvements shall be commenced after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal

subdivisions, to include as near as may be the valuable improvements of the respective parties. The Commissioner of the General Land-Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

SEC. 5, act of 1873, is identical with the above.

SEC. 2352. EXISTING RIGHTS.

Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

SEC. 6, act of 1873, is the same as the above.

MISCELLANEOUS PROVISIONS.

SECTION 10. Possessory actions for recovery of mining titles.
2238. Fees and commissions of registers and receivers.
2258. Lands not subject to pre-emption.
2386. Title to town-lots subject to mineral rights.
2406. Public surveys extended over mineral lands.
2471. Penalty for false making or altering instruments concerning mineral lands in California.
2472. Penalty for false making or dating instruments concerning mineral lands on Mexican grants in California.
2473. Penalty for presenting false or counterfeited papers, or prosecuting fraudulent suit for mineral lands in California.

SEC. 910. POSSESSORY ACTIONS CONCERNING MINING TITLES.

No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession.

SEC. 9, act of Feb. 27, 1865, 13 U. S. Stat. 441.

SEC. 2238. REGISTERS' AND RECEIVERS' FEES AND COMMISSIONS.

Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

1. A fee of one dollar for each declaratory statement filed and for services in acting on pre-emption claims.

2. A commission of one per centum on all moneys received at each receiver's office.

3. A commission to be paid by the homestead applicant, at the time of entry, of one per centum on the cash price, as fixed by law, of the land applied for; and a like commission when the claim is finally established, and the certificate therefor issued as the basis of a patent.

4. The same commission on lands entered under any law to encourage the growth of timber on western prairies, as allowed when the like quantity of land is entered with money.

5. For locating military bounty-land warrants, issued since the eleventh day of February, eighteen hundred and forty-seven, and for locating agricultural-college land-scrip, the same commission, to be paid by the holder or assignee of each warrant or scrip, as is allowed

for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre.

6. A fee, in donation cases, of five dollars for each final certificate for one hundred and sixty acres of land, ten dollars for three hundred and twenty acres, and fifteen dollars for six hundred and forty acres.

7. In the location of lands by States and corporations under grants from Congress for railroads and other purposes, (except for agricultural colleges,) a fee of one dollar for each final location of one hundred and sixty acres; to be paid by the State or corporation making such location.

8. A fee of five dollars per diem for superintending public land sales at their respective offices; and, to each receiver, mileage in going to and returning from depositing the public moneys received by him.

9. A fee of five dollars for filing and acting upon each application for patent or adverse claim filed for mineral lands, to be paid by the respective parties.

10. Registers and receivers are allowed, jointly, at the rate of fifteen cents per hundred words for testimony reduced by them to writing for claimants, in establishing pre-emption and homestead rights.

11. A like fee is provided in the preceding subdivision, when such writing is done in the land-office, in establishing claims for mineral lands.

12. Registers and receivers in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, are each entitled to collect and receive fifty per centum on the fees and commissions provided for in the first, third, and tenth subdivisions of this section.

The subdivisions, 9 and 11, relating to mineral lands, are substantially like SEC. 12 of act of 1872.

SEC. 2258. LANDS NOT SUBJECT TO PRE-EMPTION.

The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of pre-emption, to wit:

1. Lands included in any reservation by any treaty, law, or proclamation of the President, for any purpose.

2. Lands included within the limits of any incorporated town, or selected as the site of a city or town.

3. Lands actually settled and occupied for purposes of trade and business, and not for agriculture.

4. Lands on which are situated any known salines or mines.

SEC. 10, act of Sept. 4, 1841, 5 U. S. Stat. 455.

SEC. 2386. TITLE TO TOWN-LOTS SUBJECT TO MINERAL RIGHTS.

Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town-lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes, as against the United States.

SEC. 2, act of March 3, 1865, 13 U. S. Stat. 530.

SEC. 2406. PUBLIC SURVEYS EXTENDED OVER MINERAL LANDS.

There shall be no further geological survey by the Government, unless hereafter authorized by law. The public surveys shall extend over all mineral lands; and all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of claimants; but nothing in this section contained shall require the survey of waste or useless lands.

SEC. 9, act of 1870, 16 U. S. Stat. 218.

SEC. 2471. PENALTY FOR OFFENCES CONCERNING MINERAL LANDS IN CALIFORNIA.

Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered, forged or counterfeited; or willingly aids and assists in the false making, altering, forging, or counterfeiting any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente, or part of an expediente, or any title-paper, or evidence of title, right, or claim to lands, mines, or minerals in California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California, for the purpose of setting up or establishing against the United States any claim, right, or title to lands, mines, or minerals within the State of California, or for the purpose of enabling any person to set up or establish any such claim; and every person, who, for such purpose, utters or publishes as true and genuine any such false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, evidence of right, title, or claim to lands or mines or minerals in the State of California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California, shall be punishable by imprisonment at hard labor not less than three years and not more than ten years, and by a fine of not more than ten thousand dollars.

SEC. 1, act of May 18, 1858, 11 U. S. Stat. 290.

SEC. 2472. PENALTY FOR FALSELY DATING TITLE PAPERS.

Every person who makes, or causes or procures to be made, or willingly aids and assists in making any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, or any title-paper, or written evidence of right, title, or claim, under Mexican authority, to any lands, mines, or minerals in the State of California, or any instrument of writing in relation to lands or mines or minerals in the State of California, having a false date, or falsely purporting to be made by any Mexican officer or authority prior to the seventh day of July, eighteen hundred and forty-six, for the purpose of setting up or establishing any claim against the United States to lands or mines or minerals within the State of California, or of enabling any person to set up or establish any such claim; and every person who signs his name as governor, secretary, or other public officer acting under Mexican authority, to any instrument of writing falsely purporting to be a

grant, concession, or denouncement under Mexican authority, and during its existence in California, of lands, mines, or minerals, or falsely purporting to be an informe, report, record, confirmation, or other proceeding on application for grant, concession, or denouncement under Mexican authority, during its existence in California, of lands, mines, or minerals, shall be punishable as prescribed in the preceding section.

SEC. 2, act of May 18, 1858, 11 U. S. Stat. 291.

SEC. 2473. PENALTY FOR PRESENTING FALSE EVIDENCE.

Every person who, for the purpose of setting up or establishing any claim against the United States to lands, mines, or minerals within the State of California, presents, or causes or procures to be presented, before any court, judge, commission, or commissioner, or other officer of the United States, any false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, minerals, or mines in the State of California, knowing the same to be false, forged, altered, or counterfeited, or any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, mines, or minerals in California, knowing the same to be falsely dated; and every person who prosecutes in any court of the United States, by appeal or otherwise, any claim against the United States for lands, mines, or minerals in California, which claim is founded upon, or evidenced by, any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim, which has been forged, altered, counterfeited, or falsely dated, knowing the same to be forged, altered, counterfeited, or falsely dated, shall be punishable as prescribed in section twenty-four hundred and seventy-one.

SEC. 3, act of May 18, 1858, 11 U. S. Stat. 291.

SEC. 5596. REPEAL PROVISIONS.

All acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general or permanent in their nature: *Provided*, That the incorporation into said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal, or in any way effect any appropriation, or any provision of a private, local, or temporary character, contained in any of said acts; but the same shall remain in force; and all acts of Congress passed prior to said last named day, no part of which are embraced in said revision, shall not be affected or changed by its enactment.—*These statutes were approved June* 22, 1874.

No. 2. LODE AND WATER LAW OF JULY 26, 1866.

AN ACT granting the right of way to ditch and canal owners over the public lands and for other purposes.

Be it enacted, etc., That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.

SEC. 2. *And be it further enacted*, That whenever any person, or association of persons, claim a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local customs or rules of miners in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant, or association of claimants, to file in the local land office a diagram of the same, so extended laterally or otherwise as to conform to the local laws, customs, and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode, with its dips, angles, and variations to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition.

SEC. 3. *And be it further enacted*, That upon the filing of the diagram as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the Register of the land office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the Surveyor-General, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the Register of the land office shall transmit to the General Land Office said plat, survey, and description, and a patent shall issue for the same thereupon. But said plat, survey, or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued.

SEC. 4. *And be it further enacted*, That when such location and entry of a mine shall be upon unsurveyed lands, it shall and may be lawful, after the extension thereto of the public surveys, to adjust the surveys to the limits of the premises according to the location and possession and plat aforesaid; and the Surveyor-General may, in extending the surveys, vary the same from a rectangular form to suit the

circumstances of the country and the local rules, laws, and customs of miners: *Provided*, That no location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth with all its dips, variations, and angles, together with a reasonable quantity of surface for the convenient working of the same, as fixed by local rules: *And provided further*, That no person may make more than one location on the same lode, and not more than three thousand feet shall be taken in any one claim by any association of persons.

SEC. 5. *And be it further enacted*, That as a further condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

SEC. 6. *And be it further enacted*, That whenever any adverse claimants to any mine, located and claimed as aforesaid, shall appear before the approval of the survey, as provided in the third section of this act, all proceedings shall be stayed until final settlement and adjudication, in the courts of competent jurisdiction, of the rights of possession to such claim, when a patent may issue as in other cases.

SEC. 7. *And be it further enacted*, That the President of the United States be, and is, hereby, authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this act.

SEC. 8. *And be it further enacted*, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

SEC. 9. *And be it further enacted*, That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed: *Provided, however*, That whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 10. *And be it further enacted*, That wherever, prior to the passage of this act, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the said settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the

price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or said parties may avail themselves of the provisions of the act of Congress approved May twenty, eighteen hundred and sixty-two, entitled "An act to secure homesteads to actual settlers on the public domain," and acts amendatory thereof.

SEC. 11. *And be it further enacted*, That upon the survey of the lands aforesaid, the Secretary of the Interior may designate and set apart such portions of the said lands as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands of the United States, and subject to all the laws and regulations applicable to the same.

Approved July 26, 1866.

No. 3. PLACER LAW OF JULY 9, 1870.

AN ACT to amend "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes."

Be it enacted, etc., That the act granting the right of way to ditch and canal owners over the public lands, and for other purposes, approved July twenty-six, eighteen hundred and sixty-six, be, and the same is hereby, amended by adding thereto the following additional sections, numbered twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, respectively, which shall hereafter constitute and form a part of the aforesaid act.

SEC. 12. *And be it further enacted*, That claims, usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent under this act, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims: *Provided*, That where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands, no further survey or plat in such case being required, and the lands may be paid for at the rate of two dollars and fifty cents per acre: *Provided further*, That legal subdivisions of forty acres may be subdivided into ten-acre tracts; and that two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof: *And provided further*, That no location of a placer claim, hereafter made, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona fide* settler to any purchaser.

SEC. 13. *And be it further enacted*, That where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim: *Provided, however*, That nothing in this act shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

SEC. 14. *And be it further enacted*, That all *ex parte* affidavits required to be made under this act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land district where the claims may be situated.

SEC. 15. *And be it further enacted*, That Registers and Receivers shall receive the same fees for services under this act as are provided by law for like services under other acts of Congress; and that effect shall be given to the foregoing act according to such regulations as may be prescribed by the Commissioner of the General Land Office.

SEC. 16. *And be it further enacted*, That so much of the act of March third, eighteen hundred and fifty-three, entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights, and for other purposes," as provides that none other than township lines shall be surveyed where the lands are mineral, is hereby repealed. And the public surveys are hereby extended over all such lands: *Provided*, That all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of the claimants; *And provided further*, That nothing herein contained shall require the survey of waste or useless lands.

SEC. 17. *And be it further enacted*, That none of the rights conferred by sections five, eight, and nine, of the act to which this act is amendatory, shall be abrogated by this act, and the same are hereby extended to all public lands affected by this act; and all patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights as may have been acquired under or recognized by the ninth section of the act of which this act is amendatory. But nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the "Act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-fifth, eighteen hundred and sixty-six.

Approved July 9, 1870.

No. 4. TABLE OF PARALLEL REFERENCES.

	Revised Statutes.
Act of July 26th, 1866, 14 U. S. Stats., 252.	
Sec. 1	Sec. 2319.
Sec. 2	Sec. 2325.
Sec. 3	Sec. 2325.
Sec. 4	Sec. 2320.
Sec. 5	Sec. 2338.
Sec. 6	Sec. 2326.
Sec. 7	Sec. 2343.
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Sec. 9	Sec. 2339.
Sec. 10	Sec. 2341.
Sec. 11	Sec. 2342.
Act of July 9th, 1870, 16 U. S. Stats., 218.	
Sec. 12	Secs. 2329, 2330.
Sec. 13	Sec. 2332.
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Sec. 17	Secs. 2340, 2344.
Act of May 10th, 1872, 17 U. S. Stats., 91.	
Sec. 1	Sec. 2319.
Sec. 2	Sec. 2320.
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Sec. 7	Secs. 2321, 2326.
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Sec. 9	Sec. 2328.
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Sec. 15	Sec. 2337.
Sec. 16	Sec. 2443.

Revised Statutes.

Sec. 2319.....Sec. 1, Act of 1872.
Sec. 2320.....Sec. 2, Act of 1872.
Sec. 2321.....Sec. 7, Act of 1872.
Sec. 2322.....Sec. 3, Act of 1872.
Sec. 2323.....Sec. 4, Act of 1872.
Sec. 2324.....Sec. 5, Act of 1872.
Sec. 2325.....Sec. 6, Act of 1872.
Sec. 2326.....Sec. 7, Act of 1872.
Sec. 2327.....Sec. 8, Act of 1872.
Sec. 2328.....Sec. 9, Act of 1872.
Sec. 2329.....Sec. 12, Act of 1870.
Sec. 2330.....Sec. 12, Act of 1870.
Sec. 2331.....Sec. 10, Act of 1872.
Sec. 2332.....Sec. 13, Act of 1870.
Sec. 2333.....Sec. 11, Act of 1872.
Sec. 2334.....Sec. 12, Act of 1872.
Sec. 2335..Sec. 13, Act of 1872, and Sec. 14, Act of 1870.
Sec. 2336.....Sec. 14, Act of 1872.

Revised Statutes.

Sec. 2337.....Sec. 15, Act of 1872.
Sec. 2338.....Sec. 5, Act of 1866.
Sec. 2339.....Sec. 9, Act of 1866.
Sec. 2340.....Sec. 17, Act of 1870.
Sec. 2341.....Sec. 10, Act of 1866.
Sec. 2342.....Sec. 11, Act of 1866.
Sec. 2343.....Sec. 7, Act of 1866.
Sec. 2344..Sec. 17, Act of 1870, and Sec. 16, Act of 1872.

Coal Land Law of March 3, 1873, 17 Stats., p. 607.

Sec. 2347.....Sec. 1, Act of 1873.
Sec. 2348.....Sec. 2, Act of 1873.
Sec. 2349.....Sec. 3, Act of 1873.
Sec. 2350.....Sec. 4, Act of 1873.
Sec. 2351.....Sec. 5, Act of 1873.
Sec. 2352.....Sec. 6, Act of 1873.
(The coal law contains six sections only).

No. 5. ACT OF FEBRUARY 18, 1873—STATES EXCEPTED.

AN ACT in relation to Mineral Lands.

Be it enacted, etc., That within the States hereinafter named, deposits or mines of iron and coal be, and they are hereby, excluded from the operations of an act entitled "An Act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two, and said act shall not apply to the mineral lands situate and being within the States of Michigan, Wisconsin, and Minnesota, and that said lands are hereby declared free and open to exploration and purchase, according to the legal subdivisions thereof, as before the passage of said act; and that any *bona fide* entries of such lands within said States, since the passage thereof, may be patented without reference to the provisions of said act.

Approved February 18, 1873.

No. 6. ACT OF MARCH 1, 1873—ANNUAL EXPENDITURE.

AN ACT to amend an act entitled "An Act to promote the development of the mining resources of the United States."

Be it enacted, etc., That the provisions of the fifth section of the act entitled "An Act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the tenth day of June, eighteen hundred and seventy-four.

Approved March 1, 1873.

No. 7. ACT OF JUNE 6, 1874—ANNUAL EXPENDITURE.

AN ACT to amend the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two.

Be it enacted, etc., That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements

on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the first day of January, eighteen hundred and seventy-five.

Approved June 6, 1874.

No. 8. ACT OF FEBRUARY 11, 1875—TUNNEL AMENDMENT.

AN ACT to amend section two thousand three hundred and twenty-four of the Revised Statutes, relating to the development of the mining resources of the United States.

Be it enacted, etc., That section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

Approved February 11, 1875.

No. 9. ACT OF MAY 5, 1876—STATES EXCEPTED.

AN ACT to exclude the States of Missouri and Kansas from the provisions of the act of Congress entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two.

Be it enacted, etc., That within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the act entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two, and all lands in said States shall be subject to disposal as agricultural lands.

Approved May 5, 1876.

No. 10. ACT OF JANUARY 22, 1880—AGENTS—ANNUAL EXPENDITURE.

AN ACT to amend sections twenty-three hundred and twenty-four and twenty-three hundred and twenty-five of the Revised Statutes of the United States, concerning mineral lands.

Be it enacted, etc., That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "*Provided*, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: *And provided*, That this section shall apply to all applications now pending for patents to mineral lands."

SEC. 2. That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location

of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two."

Approved January 22, 1880.

No. 11. SUTRO TUNNEL ACT OF JULY 25, 1866.

AN ACT granting to A. Sutro the right of way, and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada.

Be it enacted, etc., That, for the purpose of the construction of a deep draining and exploring tunnel to and beyond the "Comstock Lode," so called, in the State of Nevada, the right of way is hereby granted to A. Sutro, his heirs and assigns, to run, construct, and excavate a mining, draining, and exploring tunnel, also to sink mining, working, or air shafts along the line or course of said tunnel, and connecting with the same at any point which may hereafter be selected by the grantee herein, his heirs or assigns. The said tunnel shall be at least eight feet high and eight feet wide, and shall commence at some point to be selected by the grantee herein, his heirs or assigns, at the hills near Carson River, and within the boundaries of Lyon county, and extending from said initial point in a westerly direction seven miles, more or less, to and beyond said Comstock Lode; and the same right of way shall extend northerly and southerly on the course of said lode, either within the same, or east or west of the same; and also on or along any other lode which may be discovered or developed by the said tunnel.

SEC. 2. *And be it further enacted*, That the right is hereby granted to the said A. Sutro, his heirs and assigns, to purchase, at one dollar and twenty-five cents per acre, a sufficient amount of public land near the mouth of said tunnel for the use of the same, not exceeding two sections, and such land shall not be mineral land, or in the *bona fide* possession of other persons who claim under any law of Congress at the time of the passage of this act, and all minerals existing or which shall be discovered therein are excepted from this grant; that upon filing a plat of said land the Secretary of the Interior shall withdraw the same from sale, and upon payment for the same a patent shall issue. And the said A. Sutro, his heirs and assigns, are hereby granted the right to purchase, at five dollars per acre, such mineral veins and lodes within two thousand feet on each side of said tunnel as shall be cut, discovered, or developed by running and constructing the same, through its entire extent, with all the dips, spurs, and angles of such lodes, subject, however, to the provisions of this act, and to such legislation as Congress may hereafter provide: *Provided*, That the Comstock Lode, with its dips, spurs, and angles, is excepted from this grant, and all other lodes, with their dips, spurs, and angles, located within the said two thousand feet, and which are or may be, at the passage of this act, in the actual *bona fide* possession of other persons, are hereby excepted from such grant. And the lodes herein excepted, other than the Comstock Lode, shall be withheld from sale by the United States; and if such lodes shall be abandoned or not worked, possessed, and held in conformity to existing mining rules, or such regulations as have been or may be prescribed by the Legislature of Nevada, they shall become subject to such right of purchase by the grantee herein, his heirs or assigns.

SEC. 3. *And be it further enacted*, That all persons, companies, or corporations owning claims or mines on said Comstock Lode or any other lode drained, benefited, or developed by said tunnel, shall hold their claims subject to the condition (which shall be expressed in any grant they may hereafter obtain from the United States,) that they shall contribute and pay to the owners of said tunnel the same rate of charges for draining or other benefits derived from said tunnel or its branches, as have been, or may hereafter be, named in agreement between such owners and the companies representing a majority of the estimated value of said Comstock Lode at the time of the passage of this act.

Approved July 25, 1866.

No. 12. TIMBER CUTTING ACT OF JUNE 3, 1878.

AN ACT authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes.

Be it enacted, etc., That all citizens of the United States and other persons, *bona fide* residents of the State of Colorado or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time *bona fide* residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, The provisions of this act shall not extend to railroad corporations.

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated, to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

Approved June 3, 1878.

No. 13. TIMBER AND STONE LAW OF JUNE 3, 1878.

AN ACT for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory.

Be it enacted, etc., That surveyed public lands of the United States

within the States of California, Oregon, and Nevada, and in Washington Territory, not included within military, Indian, or other reservations of the United States, valuable chiefly for timber, but unfit for cultivation, and which have not been offered at public sale according to law, may be sold to citizens of the United States, or persons who have declared their intention to become such, in quantities not exceeding one hundred and sixty acres to any one person or association of persons, at the minimum price of two dollars and fifty cents per acre; and lands valuable chiefly for stone may be sold on the same terms as timber lands: *Provided*, That nothing herein contained shall defeat or impair any *bona fide* claim under any law of the United States, or authorize the sale of any mining claim, or the improvements of any *bona fide* settler, or lands containing gold, silver, cinnabar, copper, or coal, or lands selected by the said States under any law of the United States donating lands for internal improvements, education, or other purposes: *And provided further*, That none of the rights conferred by the act approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An Act granting the right of way to ditch and canal owners over the public lands, and for other purposes," shall be abrogated by this act; and all patents granted shall be subject to any vested and accrued water-rights, or rights to ditches and reservoirs used in connection with such water-rights, as may have been acquired under and by the provisions of said act; and such rights shall be expressly reserved in any patent issued under this act.

SEC. 2. That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself; which statement must be verified by the oath of the applicant before the register or the receiver of the land-office within the district where the land is situated; and if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of *bona fide* purchasers, shall be null and void.

SEC. 3. That upon the filing of said statement, as provided in the second section of this act, the register of the land-office shall post a notice of such application, embracing a description of the land by legal

subdivisions, in his office, for a period of sixty days, and shall furnish the applicant a copy of the same for publication, at the expense of such applicant, in a newspaper published nearest the location of the premises, for a like period of time; and after the expiration of said sixty days, if no adverse claim shall have been filed, the person desiring to purchase shall furnish to the register of the land-office satisfactory evidence, first, that said notice of the application prepared by the register as aforesaid was duly published in a newspaper as herein required; secondly, that the land is of the character contemplated in this act, unoccupied and without improvements, other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, or coal; and upon payment to the proper officer of the purchase-money of said land, together with the fees of the register and the receiver, as provided for in case of mining claims in the twelfth section of the act approved May tenth, eighteen hundred and seventy-two, the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon: *Provided*, That any person having a valid claim to any portion of the land may object, in writing, to the issuance of a patent to lands so held by him, stating the nature of his claim thereto; and evidence shall be taken, and the merits of said objection shall be determined by the officers of the land-office, subject to appeal, as in other land cases. Effect shall be given to the foregoing provisions of this act by regulations to be prescribed by the Commissioner of the General Land Office.

SEC. 4. That after the passage of this act it shall be unlawful to cut, or cause or procure to be cut, or wantonly destroy, any timber growing on any lands of the United States, in said States and Territory, or remove, or cause to be removed, any timber from said public lands, with intent to export or dispose of the same; and no owner, master, or consignee of any vessel, or owner, director, or agent of any railroad, shall knowingly transport the same, or any lumber manufactured therefrom; and any person violating the provisions of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined for every such offense a sum not less than one hundred nor more than one thousand dollars; *Provided*, That nothing herein contained shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or preparing his farm for tillage, or from taking the timber necessary to support his improvements, or taking of timber for the use of the United States; and the penalties herein provided shall not take eeffect until ninety days after the passage of this act.

SEC. 5. That any person prosecuted in said States and Territory for violating section two thousand four hundred and sixty-one of the Revised Statutes of the United States who is not prosecuted for cutting timber for export from the United States, may be relieved from further prosecution and liability therefor upon payment, into the court wherein said action is pending, of the sum of two dollars and fifty cents per acre for all lands on which he shall cut or cause to be cut timber, or removed or caused to be removed the same: *Provided*, That nothing contained in this section shall be construed as granting to the person hereby relieved the title to said lands for said payment; but he

shall have the right to purchase the same upon the same terms and conditions as other persons, as provided hereinbefore in this act: *And further provided*, That all moneys collected under this act shall be covered into the Treasury of the United States. And section four thousand seven hundred and fifty-one of the Revised Statutes is hereby repealed, so far as it relates to the States and Territory herein named.

SEC. 6. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved June 3, 1878.

No. 14. SALINE LAW OF JANUARY 12, 1877.

AN ACT providing for the sale of saline lands.

Be it enacted, etc., That whenever it shall be made appear to the register and the receiver of any land-office of the United States that any lands within their district are saline in character, it shall be the duty of said register and said receiver, under the regulation of the General Land Office, to take testimony in reference to such lands to ascertain their true character, and to report the same to the General Land Office; and if, upon such testimony, the Commissioner of the General Land Office shall find that such lands are saline and incapable of being purchased under any of the laws of the United States relative to the public domain, then, and in such case, such lands shall be offered for sale by public auction at the local land-office of the district in which the same shall be situated, under such regulations as shall be prescribed by the Commissioner of the General Land Office, and sold to the highest bidder for cash at a price not less than one dollar and twenty-five cents per acre; and in case said lands fail to sell when so offered, then the same shall be subject to private sale, at such land-office, for cash, at a price not less than one dollar and twenty-five cents per acre, in the same manner as other lands of the United States are sold: *Provided*, That the foregoing enactments shall not apply to any State or Territory which has not had a grant of salines by act of Congress, nor to any State which may have had such a grant, until either the grant has been fully satisfied, or the right of selection thereunder has expired by efflux of time. But nothing in this act shall authorize the sale or conveyance of any title other than such as the United States has, and the patents issued shall be in the form of a release and quit-claim of all title of the United States in such lands.

SEC. 2. That all executive proclamations relating to the sales of public lands shall be published in only one newspaper, the same to be printed and published in the State or Territory where the lands are situated, and to be designated by the Secretary of the Interior.

Approved January 12, 1877.

No. 15. COAL LAWS OF JULY 1, 1864, AND MARCH 3, 1865.

AN ACT for the disposal of coal lands and of town property in the public domain.

Be it enacted, etc., That where any tracts embracing coal beds, or coal fields, constituting portions of the public domain, and which, as "mines," are excluded from the pre-emption act of eighteen hundred and forty-one, and which, under past legislation, are not liable to ordinary private entry, it shall and may be lawful for the President to cause such tracts, in suitable legal subdivisions, to be offered at public

sale to the highest bidder, after public notice of not less than three months, at a minimum price of twenty dollars per acre; and any lands not thus disposed of shall thereafter be liable to private entry at said minimum. * * [The other parts of this law concern only townsites.]

Approved July 1, 1864.

AN ACT supplemental to the act approved first July, eighteen hundred and sixty-four, "for the disposal of coal lands and of town property in the public domain."

Be it enacted, etc., That in the case of any citizen of the United States who, at the passage of this act, may be in the business of *bona fide* actual coal mining on the public lands, except on lands reserved by the President of the United States for public uses, for purposes of commerce, such citizen, upon making proof satisfactory to the register and receiver to that effect, shall have the right to enter, according to legal subdivisions, a quantity of land not exceeding one hundred and sixty acres, to embrace his improvements and mining premises, at the minimum price of twenty dollars per acre, fixed in the coal and town-property act of first July, eighteen hundred and sixty-four; *Provided*, That where the mining improvements and premises are on land surveyed at the passage of this act, a sworn declaratory statement descriptive of the tract and premises, showing also the extent and character of the improvements, shall be filed within six months from the date of this act, and proof and payment shall be made within one year from the date of such filing; but where such mining premises may be on lands hereafter to be surveyed, such declaratory statement shall be filed within three months from the return to the district land-office of the official township plat; and proof and payment shall be made within one year from the date of such filing. * * [The other portion of this law relates exclusively to townsites.]

Approved March 3, 1865.

[For coal law of 1873, see Revised Statutes, Sections 2347 to 2352 inclusive].

PART II.

LAND OFFICE REGULATIONS.

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a. GENERAL CIRCULAR INSTRUCTIONS OF APRIL 1, 1879.

DEPARTMENT OF THE INTERIOR,
General Land Office, April 1, 1879.

GENTLEMEN: Your attention is invited to the Revised Statutes of the United States and the amendments thereto, in regard to mineral lands and mining resources. Title 32, Chap. 6. (See Part I, No. 1).

MINERAL LANDS OPEN TO EXPLORATION, OCCUPATION, AND PURCHASE.

1. It will be perceived that by the foregoing provisions of law the mineral lands in the public domain, surveyed or unsurveyed, are open to exploration, occupation, and purchase, by all citizens of the United States and all those who have declared their intention to become such.

STATUS OF LODE-CLAIMS LOCATED PRIOR TO MAY 10, 1872.

2. By an examination of the several sections of the Revised Statutes, it will be seen that the *status* of lode-claims located *previous* to the 10th of May, 1872, is not changed with regard to their *extent along the lode or width of surface.*

3. Mining rights acquired under such previous locations are, however, enlarged by said Revised Statutes in the following respect, viz: The locators of all such previously taken veins or lodes, their heirs and assigns, so long as they comply with the laws of Congress and with State, Territorial, or local regulations not in conflict therewith, governing mining-claims, are invested with the exclusive possessory right of all the surface included within the lines of their locations, and of all veins, lodes, or ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such locations at the surface, it being expressly provided, however, that the right of possession to such outside parts of said veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as aforesaid, through the end-lines of their locations so continued in their own direction that such planes will intersect such exterior parts of such veins, lodes, or ledges; no right being granted, however, to the claimant of such out-

side portion of a vein or ledge to enter upon the surface location of another claimant.

4. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, *other* than the one named in the original location, to such as were not *adversely claimed on May* 10, 1872, and that where such other vein or ledge was so adversely claimed at that date, the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

5. In order to hold the possessory title to a mining-claim located prior to May 10, 1872, and for which a patent has not been issued, the law requires that *ten dollars* shall be expended annually in labor or improvements on each claim of *one hundred feet* on the course of the vein or lode, until a patent shall have been issued therefor; but where a number of such claims are held in common upon the same vein or lode, the aggregate expenditure that would be necessary to hold all the claims, at the rate of ten dollars per hundred feet, may be made upon any one claim; a failure to comply with this requirement in any one year subjecting the claim upon which such failure occurred to relocation by other parties, the same as if no previous location thereof had ever been made, unless the claimants under the original location shall have resumed work thereon after such failure and before such relocation. The first annual expenditure upon claims of this class should have been performed subsequent to May 10, 1872, and prior to January 1, 1875. From and after January 1, 1875, the required amount must be expended *annually* until patent issues. By decision of the honorable Secretary of the Interior, dated March 4, 1879, such annual expenditures are not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

6. Upon the failure of any one of several co-owners of a vein, lode, or ledge, which has not been entered, to contribute his proportion of the expenditures necessary to hold the claim or claims so held in ownership in common, the co-owners who have performed the labor, or made the improvements, as required by said Revised Statutes, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditure or improvements, his interest in the claim by law passes to his co-owners, who have made the expenditures or improvements as aforesaid.

PATENTS FOR VEINS OR LODES HERETOFORE ISSUED.

7. Rights under patents for veins or lodes heretofore granted under previous legislation of Congress, are enlarged by the Revised Statutes so as to invest the patentee, his heirs or assigns, with title to all veins, lodes, or ledges, throughout their entire depth, the top or apex of which lies within the end and side boundary-lines of his claim on the surface, as patented, extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of the

claim at the surface. The right of possession to such outside parts of such veins or ledges to be confined to such portions thereof as lie between vertical planes drawn downward through the end-lines of the claims at the surface, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges, it being expressly provided, however, that all veins, lodes, or ledges, the top or apex of which lies inside such surface locations, *other* than the one named in the patent, which were *adversely claimed on the 10th May*, 1872, are excluded from such conveyance by patent.

8. Applications for patents for mining-claims pending at the date of the act of May 10, 1872, may be prosecuted to final decision in the General Land Office, and where no adverse rights are affected thereby, patents will be issued in pursuance of the provisions of the Revised Statutes.

MANNER OF LOCATING CLAIMS ON VEINS OR LODES AFTER MAY 10, 1872.

9. From and after the 10th May, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining-claim of *fifteen hundred linear feet* along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of *fifteen hundred feet*, but in no event can a location of a vein or lode made subsequent to May 10, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

10. With regard to the extent of surface-ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case *exceed three hundred feet on each side of the middle of the vein at the surface*, and that no such surface-rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end-lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond three hundred feet on *either* side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration *where* the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

11. By the foregoing it will be perceived that no lode-claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width; but whether surface-ground of that width can be taken, depends upon the local regulations or State or Territorial laws in force in the several mining districts; and that no such local regulations or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface-

rights be limited to less than fifty feet in width, unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

12. It is provided by the Revised Statutes that the miners of each district may make rules and regulations not in conflict with the laws of the United States, or of the State or Territory in which such districts are respectively situated, governing the location, manner of recording, and amount of work necessary to hold possession of a claim. They likewise require that the location shall be so distictly marked on the ground that its boundaries may be readily traced. This is a very important matter, and locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a *description of the claim or claims* located, by reference to some natural object or permanent monument, as will identify the claim.

13. The statutes provide that no lode-claim shall be recorded until after the discovery of a vein or lode within the limits of the ground claimed; the object of which provision is evidently to prevent the encumbering of the district mining records with useless locations, before sufficient work has been done thereon to determine whether a vein or lode has really been discovered or not.

14. The claimant should therefore, prior to recording his claim, unless the vein can be traced upon the surface, sink a shaft, or run a tunnel or drift, to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface, and should give the course and distance as nearly as practicable from the discovery-shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, points of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the *locus* of the claim, and render it susceptible of identification from the description thereof given in the record of locations in the district.

15. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface-ground, and at the point of discovery or discovery-shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery; it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery-point.

16. Within a reasonable time, say twenty days after the location shall have been marked on the ground, or such time as is allowed by

the local laws, notice thereof, accurately describing the claim in manner aforesaid, should be filed for record with the proper recorder of the district, who will thereupon issue the usual certificate of location.

17. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed, or improvements made thereon, within one year from the date of such location, and annually thereafter; in default of which the claim will be subject to relocation by any other party having the necessary qualifications, unless the original locator, his heirs, assigns, or legal representatives, have resumed work thereon after such failure and before such relocation.

18. The expenditures required upon mining-claims may be made from the surface or in running a tunnel for the development of such claims, the act of February 11, 1875, providing that where a person or company has, or may, run a tunnel for the purpose of developing a lode or lodes owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same.

19. The importance of attending to these details in the matter of location, labor, and expenditure will be the more readily perceived when it is understood that a failure to give the subject proper attention may invalidate the claim.

TUNNEL RIGHTS.

20. Section 2323 provides that where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel or veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins or lodes on the line of said tunnel.

21. The effect of this is simply to give the proprietors of a mining-tunnel run in good faith the possessory right to fifteen hundred feet of any blind-lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the *line thereof* and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist.

22. The term "face," as used in said section, is construed and held to mean the first working-face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted, upon which prospecting is prohibited as aforesaid.

23. To avail themselves of the benefits of this provision of law, the proprietors of a mining-tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location, by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel-right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the *locus* in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

24. At the time of posting notice and marking out the lines of the tunnel as aforesaid, a full and correct copy of such notice of location defining the tunnel-claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is *bona fide* their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be.

This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

25. By a compliance with the foregoing much needless difficulty will be avoided, and the way for the adjustment of legal rights acquired in virtue of said section 2323 will be made much more easy and certain.

26. This office will take particular care that no improper advantage is taken of this provision of law by parties making or professing to make tunnel locations, ostensibly for the purposes named in the statute, but really for the purpose of monopolizing the lands lying in front of their tunnels to the detriment of the mining interests and to the exclusion of *bona fide* prospectors or miners, but will hold such tunnel claimants to a strict compliance with the terms of the statutes; and a *reasonable diligence* on their part in prosecuting the work is one of the essential conditions of their implied contract. Negligence or want of due diligence will be construed as working a forfeiture of their right to all undiscovered veins on the line of such tunnel.

MANNER OF PROCEEDING TO OBTAIN GOVERNMENT TITLE TO VEIN OR LODE CLAIMS.

27. By section 2325 authority is given for granting titles for mines

by patent from the government to any person, association, or corporation, having the necessary qualifications as to citizenship and holding the right of possession to a claim in compliance with law.

28. The claimant is required in the first place to have a correct survey of his claim made under authority of the surveyor-general of the State or Territory in which the claim lies; such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field-notes, in each case, will be prepared by the surveyor-general; one plat and the original field-notes to be retained in the office of the surveyor-general, one copy of the plat to be given the claimant for posting upon the claim, one plat and a copy of the field-notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor-general to the register of the proper land-district to be retained on his files for future reference.

29. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, mine, or lode; the mining district and county; whether the location is of record, and, if so, where the record may be found; the number of feet claimed along the vein and the presumed direction thereof; the number of feet claimed on the lode in each direction from the point of discovery, or other well-defined place on the claim; the name or names of adjoining claimants on the same or other lodes; or, if none adjoin, the names of the nearest claims, etc.

30. After posting the said plat and notice upon the premises, the claimant will file with the proper register and receiver a copy of such plat, and the field-notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the *notice* so posted to be attached to, and form a part of, said affidavit.

31. Attached to the field-notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase,) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent.

32. This affidavit should be supported by appropriate evidence from the mining recorder's office as to his possessory right, as follows, viz: Where he claims to be a locator, a full, true, and correct copy of such location should be furnished, as the same appears upon the mining records; such copy to be attested by the seal of the recorder, or if he has no seal, then he should make oath to the same being correct, as shown by his records; where the applicant claims as a locator in company with others who have since conveyed their interests in the lode to him, a copy of the original record of location should be filed, together

with an abstract of title from the proper recorder, under seal or oath as aforesaid, tracing the co-locator's possessory rights in the claim to such applicant for patent; where the applicant claims only as a purchaser for valuable consideration, a copy of the location record must be filed, under seal or upon oath as aforesaid, with an abstract of title certified as above by the proper recorder, tracing the right of possession by a continuous chain of conveyances from the original locators to the applicant.

33. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession, and tend to establish his claim, should be filed.

34. Upon the receipt of these papers the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days, in a newspaper published nearest to the claim; and will post a copy of such notice in his office for the same period. In all cases sixty days must intervene between the first and the last insertion of the notice in such newspaper. When the notice is published in a *weekly* newspaper ten consecutive insertions are necessary; when in a *daily* newspaper the notice must appear in each issue for the required period.

35. The notices so published and posted must be as full and complete as possible, and embrace all the *data* given in the notice posted upon the claim.

36. Too much care cannot be exercised in the preparation of these notices, inasmuch as upon their accuracy and completeness will depend, in a great measure, the regularity and validity of the whole proceeding.

37. The claimant, either at the time of filing these papers with the register, or at any time during the sixty days' publication, is required to file a certificate of the surveyor-general that not less than five hundred dollars' worth of labor has been expended or improvements made upon the claim by the applicant or his grantors; that the plat filed by the claimant is correct; that the field-notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated into a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof.

38. It will be the more convenient way to have this certificate indorsed by the surveyor-general, both upon the plat and field-notes of survey filed by the claimant as aforesaid.

39. After the sixty days' period of newspaper publication has expired the claimant will file his affidavit, showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

40. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, permit

the claimant to pay for the land according to the area given in the plat and field-notes of survey aforesaid, at the rate of five dollars for each acre and five dollars for each fractional part of an acre, the receiver issuing the usual duplicate receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land-office; after which the whole matter will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

41. In sending up the papers in the case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

42. The consecutive series of numbers of mineral entries must be continued, whether the same are of lode or placer claims.

43. The surveyor-general must continue to designate all surveyed mineral claims as heretofore by a progressive series of numbers, beginning with lot No. 37 in each township; the claim to be so designated at date of filing the plat, field-notes, &c., in addition to the local designation of the claim; it being required in all cases that the plat and field-notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the *locus* of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a remote distance from such public corner, in which latter case the reference by course and distance to permanent objects in the neighborhood will be a sufficient designation by which to fix the *locus* until the public surveys shall have been closed upon its boundaries.

ADVERSE CLAIMS.

44. Section 2326 provides for adverse claims, fixes the time within which they shall be filed to have legal effect, and prescribes the manner of their adjustment.

45. Said section requires that the adverse claim shall be filed during the period of publication of notice; that it must be on the oath of the adverse claimant; and that it must show the "*nature*," the "*boundaries*," and the "*extent*" of the adverse claim.

46. In order that this section of law may be properly carried into effect, the following is communicated for the information of all concerned:

47. An adverse mining-claim must be filed with the register of the same land-office with whom the application for patent was filed, or in his absence with the receiver, and within the sixty days' period of newspaper publication of notice.

48. The adverse notice must be duly sworn to by the person or persons making the same before an officer authorized to administer oaths within the land-district, or before the register or receiver; it will fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of

title from the office of the proper recorder should be furnished, or if the transaction was a mere verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

49. In order that the "*boundaries*" and "*extent*" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict. This plat must be made from an actual survey by a United States deputy-surveyor, who will officially certify thereon to its correctness; and in addition there must be attached to such plat of survey a certificate or sworn statement by the surveyor as to the approximate value of the labor performed or improvements made upon the claim by the adverse party or his predecessors in interest, and the plat must indicate the position of any shafts, tunnels, or other improvements, if any such exist, upon the claim of the party opposing the application, and by which party said improvements were made.

50. Upon the foregoing being filed within the sixty days as aforesaid, the register, or in his absence the receiver, will give notice in writing to *both parties* to the contest that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits.

51. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notices and plat, and the filing of the necessary proof thereof, until the controversy shall have been adjudicated in court, or the adverse claim waived or withdrawn.

52. The proceedings after rendition of judgment by the court in such case are so clearly defined by the act itself as to render it unnecessary to enlarge thereon in this place.

PLACER-CLAIMS.

53. The proceedings to obtain patents for claims usually called placers, including all forms of deposit, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where said placer-claim shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat will be required, and all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but

where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands. But where such claims are located previous to the public surveys, and do not conform to legal subdivisions, survey, plat, and entry thereof may be made according to the boundaries thereof, provided the location is in all respects legal.

54. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here; it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims, placer-claims being fixed, however, at two dollars and fifty cents per acre, or fractional part of an acre.

55. By section 2330, authority is given for the subdivision of forty-acre legal subdivisions into *ten-acre* lots, which is intended for the greater convenience of miners in segregating their claims both from one another and from intervening agricultural lands.

56. It is held, therefore, that under a proper construction of the law these ten-acre lots in mining districts should be considered and dealt with, to all intents and purposes, as legal subdivisions, and that an applicant having a legal claim which conforms to one or more of these ten-acre lots, either adjoining or cornering, may make entry thereof, after the usual proceedings, without further survey or plat.

57. In cases of this kind, however, the notice given of the application must be very specific and accurate in description, and as the forty-acre tracts may be subdivided into ten-acre lots, either in the form of squares of ten by ten chains, or of parallelograms five by twenty chains, so long as the lines are parallel and at right angles with the lines of the public surveys, it will be necessary that the notice and application state specifically what ten-acre lots are sought to be patented, in addition to the other *data* required in the notice.

58. Where the ten-acre subdivision is in the form of a square, it may be described, for instance, as the "S. E. ¼ of the S. W. ¼ of N. W. ¼," or, if in the form of a parallelogram as aforesaid, it may be described as the "W. ½ of the W. ½ of the S. W. ¼ of the N. W. ¼ (or the N. ½ of the S. ½ of the N. E. ¼ of the S. E. ¼) of section ———, township ———, range ———," as the case may be; but, in addition to this description of the land, the notice must give all the other *data* that is required in a mineral application, by which parties may be put on inquiry as to the premises sought to be patented. The proof submitted with applications for claims of this kind must show clearly the character and the extent of the improvements upon the premises.

59. Applicants for patent to a placer-claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement; and the vein or lode must be surveyed and marked upon the plat; the field-notes and plat giving the area of the lode claim or claims and the area of the placer separately. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent, and in all the notices. It should be remem-

bered that an application which omits to include an application for a known vein or lode therein, must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of claimant and one or more witnesses.

60. When an adverse claim is filed to a placer application, the proceedings are the same as in the case of vein or lode claims, already described.

QUANTITY OF PLACER GROUND SUBJECT TO LOCATION.

61. By section 2330 it is declared that no location of a placer claim made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

62. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public surveys and the subdivisions of such surveys, and no such locations shall include more than twenty acres for each individual claimant.

63. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer-claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location made by an individual can exceed twenty acres, and no location made by an association of individuals can exceed one hundred and sixty acres, which location of one hundred and sixty acres cannot be made by a less number than eight *bona fide* locators; and no local laws or mining regulations can restrict a placer location to less than twenty acres, although the locator is not compelled to take so much.

64. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations, so far as the same are applicable; the law requiring, however, that where placer claims are upon *surveyea* public lands, the locations must hereafter be made to conform to legal subdivisions thereof as near as practicable.

65. With regard to the proofs necessary to establish the possessory right to a placer-claim, section 2332 provides that "where such person or association, they and their grantors, have held and worked their claims, for a period equal to the time prescribed by the statute of limitations for mining-claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim."

66. This provision of law will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

67. When an applicant desires to make his proof of possessory right in accordance with this provision of law, you will not require him to produce evidence of location, copies of conveyances, or abstracts of

title, as in other cases, but will require him to furnish a duly certified copy of the statute of limitations of mining-claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining-ground covered by his application; the area thereof, the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and, if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and *bona fides* which he may desire to submit in support of his claim.

68. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining-claims in the State or Territory as aforesaid, other than that which has been finally decided in favor of the claimant.

69. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

70. It will be to the advantage of claimants to make their proofs as full and complete as practicable.

MILL-SITES.

71. Section 2337 provides that, "where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section."

72. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode, and to a piece of non-mineral land not contiguous thereto, for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337 United States Revised Statutes, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land-office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field-notes, may include, embrace, and describe, in addition to the vein or lode, such non-contiguous mill-site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim.

73. In making the survey in a case of this kind, the lode-claim should be described in the plat and field-notes as "Lot No. 37, A," and the mill-site as "Lot No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill-site to a corner of the lode-claim to be invaribly given in such plat and field-notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill-site as well as upon the vein or lode for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill-site, but the whole area of both lode and mill-site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such load and mill-site claim.

74. In case the owner of a quartz-mill or reduction-works is not the owner or claimant of a vein or lode, the law permits him to make application therefor in the same manner prescribed herein for mining-claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill-site at said price per acre.

75. In every case there must be satisfactory proof that the land claimed as a mill-site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of the claimant, supported by that of one or more disinterested persons capable from acquantance with the land to testify understandingly.

76. The law expressly limits mill-site locations made from and after its passage to *five acres*.

77. The registers and receivers will preserve an unbroken consecutive series of number for all mineral entries.

PROOF OF CITIZENSHIP OF MINING CLAIMANTS.

78. The proof necessary to establish the citizenship of applicants for mining-patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge, or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

79. In case of an individual or an association of individuals who do not appear by their duly authorized agent, you will require the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence.

80. In case an applicant has declared his intention to become a citizen, or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

81. The affidavit of citizenship may be taken before the register and receiver, or any other officer authorized to administer oaths within the district.

APPOINTMENT OF DEPUTY SURVEYORS OF MINING-CLAIMS—CHARGES FOR SURVEYS AND PUBLICATIONS—FEES OF REGISTERS AND RECEIVERS, ETC.

82. Section 2334 provides for the appointment of surveyor of mineral claims, authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications, prescribes the fees allowed to the local officers for receiving and acting upon applications for mining-patents and for adverse claims thereto, &c.

83. The surveyors general of the several districts will, in pursuance of said law, appoint in each land-district as many *competent* deputies for the survey of mining-claims as may seek such appointment; it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining-claimants, and not by the United States; the system of making deposits for mineral surveys, as required by previous instructions, being hereby revoked as regards *field-work;* the claimant having the option of employing *any* deputy surveyor within such district to do his work in the field.

84. With regard to the *platting* of the claim and other *office-work* in the surveyor general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States Treasurer, or designated depository, in favor of the United States Treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor-general duplicate certificates of such deposit in the usual manner.

85. The surveyors general will endeavor to appoint mineral deputy surveyors so that one or more may be located in each mining district for the greater convenience of miners.

86. The usual oaths will be required of these deputies and their assistants, as to the correctness of each survey executed by them.

87. The law requires that each applicant shall file with the register and receiver a sworn statement of all charges and fees paid by him for publication of notice and for survey, together with all fees and money paid the register and receiver, which sworn statement is required to be transmitted to this office, for the information of the Commissioner.

88. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

89. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim.

90. All fees or charges under this law may be paid in United States currency.

91. The register and receiver will, at the close of each month, forward to this office an abstract of mining applications filed, and a register of receipts, accompanied with an abstract of mineral lands sold, and an abstract of adverse claims filed.

92. The fees and purchase-money received by registers and receivers must be placed to the credit of the United States in the receiver's monthly and quarterly account, charging up in the disbursing account

the sums to which the register and receiver may be respectively entitled as fees and commissions, with limitations in regard to the legal maximum.

HEARINGS TO ESTABLISH THE CHARACTER OF LANDS.

93. Section 2335 provides that all affidavits required under this chapter may be verified before *any* officer authorized to administer oaths within the land-district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office.

94. Hearings of this character, as practically distinguished, are of two kinds:

1st. Where lands which are sought to be entered and patented as agricultural are alleged by affidavit to be mineral, or when sought as mineral their non-mineral character is alleged.

The proceedings relative to this class are in the nature of a contest between two or more known parties, and the testimony may be taken on personal notice of at least ten days, duly served on all parties, or if they cannot be found, then by publication for thirty days in a newspaper of general circulation, to be designated by the register of the land-office as published nearest to the land in controversy. If publication is made in a weekly newspaper, the notice must be inserted in five consecutive weekly issues thereof.

2d. When lands are returned as mineral by the surveyor-general, or are withdrawn as mineral by direction of this office.

When such lands are sought to be entered as agricultural, notice must be given by publication for thirty days, as aforesaid, and also by posting in a conspicuous place on each forty-acre subdivision of the land claimed, for the same period.

95. All notices must describe the land, give the name and address of the claimant, the character of his claim, and the time, place, and purpose of the hearing.

Proof of service of notice, when personal, must consist of either acknowledgment of service indorsed on the citation (which is always desirable), or the affidavit of the party serving the same, giving date, place, and manner of service, indorsed as afôresaid.

Proof of publication must be the affidavit of the publisher of the newspaper, stating the period of publication, giving dates, stating whether in a daily or weekly issue, and a copy of the notice so published must be attached to, and form a part of, the affidavit.

Proof of posting on the claim must be made by the affidavits of two or more persons who state when and where the notice was posted; that it remained so posted during the prescribed period, giving dates, and a copy of the notice so posted must be attached to, and made a part of, the affidavits.

Proof of notice is indispensable to the regularity of proceedings, and must accompany the record in every case.

The expense of notice must in every case be paid by the parties thereto.

96. At the hearing there must be filed the affidavit of the publisher of the paper that the said notice was published for the required time,

stating when and for how long such publication was made, a printed copy thereof to be attached and made a part of the affidavit. In every case where practicable, in addition to the foregoing, *personal* notice must be served upon the mineral affiants, and upon any parties who may be mining upon or claiming the land.

97. At the hearing the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode, or vein of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer-mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all.

98. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivisions such crops are raised; also which of these subdivisions embrace his improvements, giving in detail the extent and value of his improvements, such as house, barn, vineyard, orchard, fencing, etc.

99. It is thought that *bona fide* settlers upon lands really agricultural will be able to show, by a clear, logical, and succinct chain of evidence, that their claims are founded upon law and justice; while parties who have made little or no permanent agricultural improvements, and who only seek title for speculative purposes, on account of the mineral deposits known to themselves to be contained in the land, will be defeated in their intentions.

100. The testimony should be as full and complete as possible; and, in addition to the leading points indicated above, everything of importance bearing upon the question of the character of the land should be elicited at the hearing.

101. Where the testimony is taken before an officer who does not use a seal, other than the register and receiver, the official character of such officer must be attested by a clerk of a court of record, and the testimony transmitted to the register and receiver, who will thereupon examine and forward the same to this office, with their joint opinion as to the character of the land as shown by the testimony.

102. When the case comes before this office, such an award of the land will be made as the law and the facts may justify; and in cases where a survey is necessary to set apart the mineral from the agricultural land in any forty-acre tract, the necessary instructions will be issued to enable the agricultural claimant, *at his own expense*, to have the work done, at his option, either by United States deputy, county, or other local surveyor; the survey in such case may be executed in

such manner as will segregate the portion of land actually containing the mine, and used as surface-ground for the convenient working thereof, from the remainder of the tract, which remainder will be patented to the agriculturist to whom the same may have been awarded, subject, however, to the condition that the land may be entered upon by the proprietor of any vein or lode for which a patent has been issued by the United States, for the purpose of extracting and removing the ore from the same, where found to penetrate or intersect the land so patented as agricultural, as stipulated by the mining-act.

103. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

104. Upon the filing of the plat and field-notes of such survey, duly sworn to as aforesaid, you will transmit the same to the surveyor-general for his verification and approval; who, if he finds the work correctly performed, will properly mark out the same upon the original township-plat in his office, and furnish authenticated copies of such plat and description both to the proper local land office and to this office, to be affixed to the duplicate and triplicate township-plats respectively.

105. In cases where a portion of a forty-acre tract is awarded to an agricultural claimant, and he causes the segregation thereof from the mineral portion, as aforesaid, such agricultural portion will not be given a numerical designation as in the case of surveyed mineral claims, but will simply be described as the "Fractional ——— quarter of the ——— quarter of section ———, in township ———, of range ———, meridian, containing ——— acres, the same being exclusive of the land adjudged to be mineral in said forty-acre tract."

106. The surveyor must correctly compute the area of such agricultural portion, which computation will be verified by the surveyor-general.

107. After the authenticated plat and field-notes of the survey have been received from the surveyor-general, this office will issue the necessary order for the entry of the land, and in issuing the receiver's receipt and register's patent certificate you will invariably be governed by the description of the land given in the order from this office.

108. The fees for taking testimony and reducing the same to writing in these cases will have to be defrayed by the parties in interest. Where such testimony is taken before any other officer than the register and receiver, the register and receiver will be entitled to no fees.

109. If, upon a review of the testimony at this office, a ten-acre tract should be found to be properly mineral in character, that fact will be no bar to the execution of the settler's legal right to the remaining *non-mineral* portion of his claim, if contiguous.

110. No fear need be entertained that miners will be permitted to make entries of tracts ostensibly as mining-claims, which are not mineral, simply for the purpose of obtaining possession and defrauding settlers out of their valuable agricultural improvements; it being almost an impossibility for such a fraud to be consummated under the laws and regulations applicable to obtaining patents for mining-claims.

111. The fact that a certain tract of land is decided upon testimony

to be mineral in character is by no means equivalent to an award of the land to a miner. A miner is compelled by law to give sixty days' publication of notice, and posting of diagrams and notices, as a preliminary step; and then, before he can enter the land, he must show that the land yields mineral; that he is entitled to the possessory right thereto in virtue of compliance with local customs or rules of miners, or by virtue of the statute of limitations; that he or his grantors have expended, in actual labor and improvements, an amount of not less than five hundred dollars thereon, and that the claim is one in regard to which there is no controversy or opposing claim. After all these proofs are met, he is entitled to have a survey made at his own cost where a survey is required, after which he can enter and pay for the land embraced by his claim.

J. A. WILLIAMSON, *Commissioner.*

b. DEFINITION OF "ROCK IN PLACE" AND "VALUABLE MINERAL DEPOSITS."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, Washington, D. C., July 15, 1873.

GENTLEMEN: I have had under consideration a number of letters, mostly from California, wherein inquiries are made as to the proper course to pursue to obtain title to public lands containing valuable deposits of borax, carbonate and nitrate of soda, sulphur, alum, and asphalt. Among them is one from the Nevada Consolidated Borax Company, from which it appears that this company intends to commence the utilization of the alkaline plains of Nevada.

The first section of the act of Congress approved May 10, 1872, reads as follows: "That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase," etc.

The second section declares "that mining-claims upon veins or lodes of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located," etc.

The sixth section refers to "a patent for any land claimed and located for valuable deposits."

It will be observed that in the first section of the act the expression "valuable mineral deposits" is employed, while in the second and sixth sections the language is, "valuable deposits." Allowing, however, that it was the intention of the law-makers by this act to dispose of "valuable mineral deposits," the question becomes this, "What is a valuable mineral deposit?"

The meaning of the word valuable need not be discussed. Anything a person is willing to give money for, or that is useful or precious, or that has merchantable qualities, is valuable. The word deposit has always been construed by this office to be a general term, embracing veins, lodes, ledges, placers, and all other forms in which valuable metals have ever been discovered.

In the sense in which the term mineral was used by Congress, it seems difficult to find a definition that will embrace what mineralogists agree should be included. The several authorities consulted in this connection seem to find it an easier task to determine what is not, than

what is, mineral. However, in all the works on mineralogy that have come under my notice, borax, nitrate and carbonate of soda, sulphur, alum, and asphalt, are classified and discussed as minerals.

Alger's edition of Phillips' Mineralogy speaks of "the crust of the globe as consisting chiefly of earths and earthy minerals." Between earths and minerals there is a clear line of demarkation, and, though difficult to express in a few words, chemical composition and crystallization are the principal means of tracing the distinction. Webster seems to be the most accurate in his definition of a mineral, for he recognizes chemical composition as the important consideration. He defines a mineral to be "any inorganic species having a definite chemical composition."

From a careful examination of this matter, the conclusion I reach as to what constitutes "a valuable mineral deposit" is this:

That whatever is recognized as a mineral by the standard authorities on the subject, where the same is found in quantity and quality to render the land sought to be patented more valuable on this account than for purposes of agriculture, should be treated by this office as coming within the purview of the mining act of May 10, 1872.

The language of the statute is so comprehensive, and capable of such liberal construction, that I cannot avoid the conclusion that Congress intended it as a general mining law, "to promote the development of the mining resources of the United States," and to afford a method whereby parties holding the possessory right under local laws and regulations could secure title to tracts containing valuable accretions or deposits of mineral substances, except where a special law might intervene, reserving from sale, or regulating the disposal, of particularly specified mineral-bearing lands.

To the several inquiries in the letters referred to, I therefore reply that lands valuable on account of borax, carbonate of soda, nitrate of soda, sulphur, alum, and asphalt, as well as "all valuable mineral deposits," may be applied for and patented under the provisions of the mining act of May 10, 1872. In case an application should be presented to you for a survey of land valuable for other minerals than those specified herein and in the act itself, you will first refer the question to this office, in order that applicants may be saved the expense of applying for lands that may be reserved by a special act of Congress.

It will be observed that the mineral-producing lands are divided into two classes—the one class embraces lands where the mineral matter is within "rock in place," or, geologically speaking, "*in situ*;" and the second includes placers and all forms of deposits excepting those in "rock in place." In this connection, I deem it a matter of importance to give the construction this office places upon the expression, "vein or lode of quartz or other rock in place," to prevent mistakes in locating the two classes of mines referred to, thereby saving to claimants considerable expense and delay.

In geology and among miners, veins or lodes imply generally an aggregation of mineral matter found in the fissures of the rocks which inclose it, but are of great variety, veins differing very much in their formation and appearance. Lode is a term in general use among the tin miners of Cornwall, and was introduced on the Pacific coast by emigrants from the Cornish mines, and signifies a fissure filled either

by metallic or earthy matter. In several of the mining districts, the terms lead and ledge are employed in the local regulations concerning mines. Lead is used to convey the same idea as lode, while ledge would seem to indicate a layer or stratum of mineral interposed between a course or ridge of rocks.

Veins may be either sedimentary, plutonic, or segregated, or of infiltration or attrition, depending upon the peculiar formation, or the mode of occurrence of the mineral deposit. There is also another form of deposit different from either of those mentioned above, called contact deposit.

European miners mention still others, called in England "floors," in Germany "Stockwerke," and a form of deposit known as "Fahlband." These latter are, more properly speaking, ore-bearing belts, irregular in their dimensions, but presenting a certain degree of parallelism with each other. Similar in some respects to the Fahlbands, are the metalliferous zones, or "amygdaloidal bands," which are said to exist on Mount Lincoln and Mount Bross, Colorado.

However, if the question were raised, neither of the forms of deposit known as contact deposit, Fahlbands, or segregated veins, could be accepted as true metalliferous veins, nor could it frequently be made to appear, without expensive excavation, whether the metal in the mine for which a patent is sought occurs in the form of a true vein or not.

But there is no reason for supposing that the terms were employed in their strict geological signification. The plain object of the law is to dispose of the mineral lands of the United States for money value, and whatever form of deposit can be embraced in the general phrase "vein or lode of quartz, or other rock in place," must be sold at the rate of five dollars per acre.

It is evidently the policy of the Government to include as much land as possible under this designation, for the reason that, as the most valuable metals and minerals occur in the several vein-formations, it is desirable that the lands wherein they are discovered should be sold in limited quantities, thereby preventing the few from monopolizing large tracts, which ought to remain open to all for exploration and development; and for the further reason that the Government derives a larger revenue from the sale of lands of this description.

In fine, I include in the first class all lands wherein the mineral matter is contained in veins or ledges, occupying the original habitator location of the metal or mineral; whether in true or false veins, in zones, in pockets, or in the several other forms in which minerals are found in the original rock, whether the gangue, or matrix, is disintegrated at the surface or not.

You will please give publicity to this communication where it can be done without expense to the Government.

Very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner.*

To Surveyors-general and Registers and Receivers.

c. HEARINGS TO DETERMINE CHARACTER OF LAND.

DEPARTMENT OF THE INTERIOR,

General Land Office, March 20, 1872.

GENTLEMEN: In order to save as much as possible the expense, trouble, and delay incident to the present manner of taking proofs as

to the mineral or agricultural character of lands, it is hereby directed that testimony upon this point may be taken before a clerk of a court of record in and for the county in which the land is situate, after due notice, in the following manner, to wit:

Hereafter, when an application is filed to enter land as agricultural which is alleged, under oath, to be mineral in character, or which is returned upon the official township plat as mineral, or land which is now or may hereafter be suspended by order of this office for proof as to the non-mineral character thereof, you will, upon such application being made, require such applicant to publish, at his own expense, a notice thereof once each week, for four consecutive weeks, in a newspaper of largest circulation published nearest to the land in question; such notice to give the name and address of the claimant, the designation of the subdivision embraced by his filing, the names of any miners or mining companies whose claims or improvements are upon the land, or in the immediate vicinity thereof; the names of the parties who filed the affidavits that the land is mineral; and, finally, the notice should name a day, which shall not be less than thirty (30) days from the date of the first insertion of said notice in such newspaper, upon which testimony will be taken before the county clerk, to determine the facts as to the mineral or non-mineral character of the land, when such persons as may be brought by the parties in interest will be examined and their testimony reduced to writing; the whole to be duly attested by the seal of the court, and transmitted to the Register and the Receiver, who will thereupon examine and forward the same to this office, with their joint opinion as to the character of the land, as shown by the testimony. A copy of this notice must be posted in a conspicuous place, upon each forty-acre subdivision claimed, for four consecutive weeks, proof of which must be made under oath by at least two persons, who will state when the notice was posted and where posted.

At the hearing, there must be filed the affidavit of the publisher of the paper that the said notice was published for the required time, stating when and for how long such publication was made, a printed copy thereof to be attached and made a part of the affidavit. In every case where practicable, in addition to the foregoing, personal notice must be served on the mineral affiants, and upon any parties who may be mining upon or claiming the land.

At the hearing, the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place, bearing gold, silver, cinnabar, or copper, which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular forty-acre subdivisions mining has been

done, and at what time the land was abandoned for mining purposes, if abandoned at all.

The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular forty-acre subdivisions such crops are raised; also which of these subdivisions embraces his improvements, giving in detail the extent and value of his improvements, such as house, barn, vineyard, orchard, fencing, etc.

It is thought that *bona fide* settlers upon lands really agricultural, will be able to show, by a clear, logical, and succinct chain of evidence, that their claims are founded upon law and justice; while parties who have made little or no permanent agricultural improvements, and who only seek title for speculative purposes, on account of the mineral deposits known to themselves to be contained in the land, will be defeated in their intentions.

The testimony should be as full and complete as possible; and in addition to the leading points indicated above, everything of importance bearing upon the question of the character of the land should be elicited at the hearing. If, upon a review of the testimony at this office, a forty-acre tract should be found to be properly mineral in character, that fact will be no bar to the execution of the settler's legal right to the remaining non-mineral portion of his claim, if contiguous. The fees for taking testimony and reducing the same to writing, in these cases, when taken by a clerk of a court of record, as aforesaid, will have to be defrayed by the parties in interest.

When, by reason of proximity to the local land office, an applicant to enter lands of this class prefers to have the testimony taken before the Register and the Receiver, instead of the clerk of a court of record, as aforesaid, he has that option. In such case the mode of proceeding is fully set forth in the enclosed circular of the sixth May, 1871, which circular is hereby modified, as to the manner of giving notice, so as to conform with these instructions relative to that point. It must be steadily kept in mind that the testimony hereby authorized to be taken before the clerk of a court is not for the purpose of determining questions of conflict between either pre-emption or mineral claimants, but simply to determine the character of the land, whether mineral or agricultural.

When the testimony is taken before the clerk of a court, as aforesaid, the Register and the Receiver will be entitled to no fees; those paid by the parties to the county clerk being all they are required to pay with reference to the proof as to the character of the land.

No fear need be entertained that miners will be permitted to make entries of tracts ostensibly as mining claims, which are not mineral, simply for the purpose of obtaining possession and defrauding settlers out of their valuable agricultural improvements; it being almost an impossibility for such a fraud to be consummated under the laws and regulations applicable to obtaining patents for mining claims. The fact that a certain tract of land is decided upon testimony to be mineral in character, is by no means equivalent to an award of the land to a miner. A miner is compelled by law to give three months publication of notice, and three months posting of diagrams and notices, as a

preliminary step; and then, before he can enter the land, he must show that the land yields mineral; that he is entitled to the possessory right thereto in virtue of compliance with local customs or rules of miners, or by virtue of the statute of limitations; that he or his grantors have expended, in actual labor and improvements, an amount of not less than one thousand [500] dollars thereon, and that the claim is one in regard to which there is no controversy or opposing claim. After all these proofs are met, he is entitled to have a survey made at his own cost, where a survey is required, after which he can enter and pay for the land embraced by his claim.

It is quite unlikely that a miner would undertake these long and expensive proceedings, simply for the purpose of attempting to defraud an agriculturist out of a tract of land which was not mineral but improved agricultural land, when there is an almost absolute certainty, not only of his scheme being frustrated, but also of his being unable to furnish the proof always required as a basis of patent for a mineral claim.

You are requested to give the foregoing careful attention, and to furnish copies hereof to parties upon application, in order that they may be fully informed in the premises.

Very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner.*

Register and Receiver, U. S. Land Office at ———.

[See General Circular, par. 93 to 111.—EDITOR.]

DEPARTMENT OF THE INTERIOR,
General Land Office,
WASHINGTON, D. C., *April* 22, 1880.

REGISTERS AND RECEIVERS, *U. S. District Land Offices:*

GENTLEMEN: Your attention is directed to the following copy of letter from the Hon. Secretary of the Interior:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *April* 22, 1880.

"SIR: I have received your letter of the 16th instant, calling my attention to the withdrawals heretofore made of mineral lands under the direction of my predecessor, Hon. C. Delano, and setting forth at length the difficulties which arise in the adjustment of homestead and pre-emption claims on account of said withdrawals, and recommending in view of such difficulties that the "present policy and practice of throwing the burden of proof upon agricultural claimants be reversed; that the applicant for such entry be required to make the non-mineral affidavit required as aforesaid, and that this be deemed sufficient in absence of the alleged mineral character of his claim; that if a party does allege in proper form that the land is valuable for minerals, he should be required to affirmatively prove the fact, instead of in every case, with or without such allegation, requiring every settler to prove an expensive negative."

You further recommend "that the withdrawals heretofore made as aforesaid be revoked, in order to remove the restriction upon *bona fide* agricultural settlements, and to place such lands in a condition where they can be occupied, purchased and developed."

I have carefully considered the recommendations made by you for the reasons stated, and have to say that they meet my approval.

You are therefore instructed to so modify the instructions of your Office as to conform to said recommendations, and you are also instructed to revoke the orders of withdrawals mentioned by you, in order that the restrictions thereby made upon agricultural settlements of the lands may be removed.

Very respectfully, C. SCHURZ, *Secretary.*

The Commissioner of the General Land Office.

The recommendations to the Hon. Secretary, upon which his said approval was based, are, in brief and in substance, that immense tracts of land are now, and, for several years past have been, officially designated as mineral lands; that as a matter of fact but an exceedingly small part of this entire area is valuable for minerals, but is good agricultural land; that these withdrawn lands are subject to entry under the homestead, pre-emption, and other laws providing for the sale of agricultural lands, only after a hearing in every case, wherein the burden of proof lies upon the agricultural applicant to establish that the tract claimed is non-mineral; that it is thus rendered exceedingly easy to cause such applicant great expense, delay, and vexation; that the expense, embarrassment, and delay actually incident to the course hitherto pursued operate to discourage and prevent settlements on such lands; that the timber on these lands is being largely taken on the claim that they are mineral lands; and that the vast tracts so designated, and which are capable of supporting many thousands of settlers, adding largely to the production of the country, and contributing to its better progress, are not only for the most part practically reserved from sale under any law, but being so secluded it becomes easier for a party to fraudulently enter as agricultural a tract which he may discover to be valuable for minerals than for a *bona fide* settler to secure patent for agricultural land. All of such withdrawals heretofore made of lands in your district are hereby revoked; and when any party applies to enter any tract under any of the laws relating to agricultural lands, he will be required to make the usual non-mineral affidavit, which, in the absence of any allegation that the land is mineral, will be deemed sufficient. Should affidavits be filed with you, properly alleging any tract sought to be entered as aforesaid to be mineral, you will, after due notice, hold a hearing to determine the facts. In such cases the burden of proof will rest upon the party who alleges the land to be valuable for minerals, and he must affirmatively prove his allegations.

It is expected that you will exercise all possible prudence and care in respect to this matter, and endeavor to carefully and conscientiously maintain and advance the purpose of the Department and this Office, to wit: to enable the public lands, which are in fact agricultural, to be occupied and purchased without oppressive conditions, and to prevent lands which are in fact valuable for minerals from being taken except under the special laws applicable thereto.

Very respectfully,

J. A. WILLIAMSON, *Commissioner.*

d. SURVEYS.

DEPARTMENT OF THE INTERIOR,
General Land Office,
WASHINGTON, D. C., *Nov.* 20, 1873.

SIR: Information has reached this office that deputies, in surveying mining claims, are in the habit of following the direction of the parties in interest, instead of adhering to the lines established in the original location of such claims, and thus, in effect, making a private instead of an official survey.

Under all laws and regulations, whether local or general, the location of a claim in such a manner as to give notice to all the world of the nature and extent of the same is not only indispensable, but in most cases, mining claims are initiated thereby, and all subsequent proceedings are based upon and must conform to such location. A failure to make and record the location in accordance with the law and regulations in force at the date of the location will defeat the claim, and if it is not made with such definiteness as to operate as notice to all persons seeking to acquire rights to mining lands, it will be void for uncertainty.

It follows, therefore, that in making surveys of mining claims, it becomes essentially necessary to ascertain the boundaries thereof as established by the original location, for the rights of the claimant are limited and defined by such boundaries. To make a survey in accordance with other lines or boundaries, is tantamount to making a new location of the claim, and the rights of adjoining locators who have complied with the requirements of the law may be interfered with and defeated thereby. The practice of making surveys according to the dictation of parties in interest, instead of in accordance with the original location, has already caused great confusion and been productive of great injury to *bona fide* claimants.

You will, therefore, require the applicant for a survey to furnish a copy of the original record of location, properly certified to by the recorder having charge of the records of the mining locations in the district where the claim is situate, and cause all official surveys of mining claims to be made in strict conformity to the lines established by the original location as recorded; and if the record of locations made prior to the passage of the mining act of May 10, 1872, is not sufficiently definite and certain to enable the deputy to make a correct survey therefrom, he should, after reasonable notice in writing to be served personally or through the United States mail on the applicant for survey and adjoining claimants, whose residence or post-office address he may know, or can ascertain by the exercise of reasonable diligence, take the testimony of neighboring claimants, and other persons who are familiar with the boundaries thereof, as originally located and asserted by the locators of the claim, and after having ascertained by such testimony the boundaries as originally established, he should make a survey in accordance therewith, and transmit full and correct returns of survey, accompanied by the copy of the record of location, the testimony, and a copy of the notice served on the claimant and adjoining proprietors, certifying thereon, when, in what manner, and on whom, service was made.

The act of Congress of May 10, 1872, expressly provides that "the

location must be distinctly marked on the ground, so that its boundaries can be readily traced," and "that all records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims, located by reference to some natural object or permanent monument, as will identify the claim."

These provisions of the law must be strictly complied with in each case to entitle the claimant to a survey and patent, and therefore should a claimant under a location made subsequent to the passage of the mining act of May 10, 1872, who has not complied with said requirements in regard to marking the location upon the ground and recording the same, apply for a survey, you will decline to make it.

The only relief for a party under such circumstances will be to make a new location in conformity to law and regulations, as no case will be approved and patented by this office unless these and all other provisions of law are substantially complied with. If the law has been complied with in the matter of marking the location on the ground and recording the same, and any question arises in the execution of the survey as to the identity of monuments, marks, or boundaries, which cannot be determined by a reference to the record, the deputy should take testimony in the manner hereinbefore prescribed for surveys of claims located prior to May 10, 1872; and having thus ascertained the true and correct boundaries originally established, marked, and recorded, make the survey accordingly.

You will at once issue instructions to your deputies, requiring them to abandon the practice of surveying mining claims under the direction of parties in interest, and to conform to the rule as hereinbefore prescribed. From an examination of the returns of surveys of mining claims, I am satisfied that in many instances the deputy surveyors certify to the value of improvements without ascertaining whether such improvements are made by the claimant or his grantors, or not. No improvements should be included in the estimate unless they have been made by the applicant for survey or by those from whom he derives title. The value of improvements made upon other locations, or by other claimants, should not be taken into consideration, but excluded by deputies in their estimate of improvements upon the claim.

You will so instruct your deputies, and hereafter require them to certify in each instance that the improvements and expenditures considered by them in their estimate, and which they must describe in their report, were made by the applicant or by the persons from whom he derives title.

The following certificate will be attached to the field-notes of survey by the Surveyor-general.

"I certify that the foregoing transcript of the field-notes of the survey of the ——— mining claim, situate in ——— mining district, county of ———, and ——— of ———, has been correctly copied from the original notes of said survey on file in this office; that said field-notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises; and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the *locus* thereof.

"I further certify that the value of the labor and improvements upon the said mining claim, placed thereon by the claimant and his grantors,

is not less than five hundred dollars, and that said improvements consist of—(here describe the improvements made by the applicant and his grantors upon the claim.) I further certify that the plat thereof filed in the U. S. land office at ——— is correct and in conformity with the foregoing field-notes.

"———, U. S. Surveyor-General for ———.

"U. S. Surveyor-General's Office, ———, 187–."

The following certificate will be indorsed upon each plat by the Surveyor-General, viz.:

"The original field notes of the survey of the ———, from which this plat has been made, have been examined and approved, and are on file in this office, and I hereby certify that they furnish such description of said ——— mining claim as will, if incorporated into a patent, serve fully to indentify the premises; and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the *locus* thereof.

"I further certify that the value of the labor and improvements upon the said mining claim, placed thereon by the applicant and his grantors, is not less than five hundred dollars, and that said improvements consist of—(here describe the improvements made by the applicant or his grantors upon the claim.) And I further certify that this is a correct plat of said ——— mining claim or premises, made in conformity with said original field-notes of survey thereof.

"———, U. S. Surveyor-General for ———.

"U. S. Surveyor-General's Office, ———, ———, 187–."

You will acknowledge the receipt hereof, and issue the necessary instructions to your deputies to secure a strict compliance with the foregoing instructions. Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

U. S. Surveyor-General ———

[See General Circular, pars. 28, 29, 30, 31, 37, 38, 43, 49, 53, 55, 59, 62, 71, 72, 73, 82 to 92 inclusive, 102 to 107 inclusive.—EDITOR.]

CIRCULAR INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
General Land Office,
WASHINGTON, D. C., *November* 13, 1877.

SURVEYOR-GENERAL OF—

SIR: Upon the examination of the field notes of survey of several deputy mineral surveyors, it is found that the proper amount of care and accuracy in the execution of the field work and in the preparation of the field notes of survey are not exercised by all who have been appointed as deputy mineral surveyors.

You will observe that section 2334 of the Revised Statutes of the United States authorizes the Surveyor-General to appoint to each land district containing mineral lands as many *competent* surveyors as shall apply for appointment to survey mining claims. The law only authorizes the appointment of *competent* surveyors, and when in the discharge of your duties you become convinced that a deputy who has received an appointment is *incompetent* or careless in the discharge of his duties, you will promptly revoke his appointment.

You will require *each deputy mineral surveyor* to enter into bonds, with two or more sureties, in the sum of $10,000, for the faithful performance of his duties in the survey of mining claims under the mining statutes.

You will inform your deputies of the import of this letter and acknowledge the receipt thereof.

Very respectfully, your obedient servant,

J. A. WILLIAMSON, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
General Land Office,
WASHINGTON, D. C., *September* 13, 1878.

To U. S. SURVEYORS-GENERAL:

By direction of the Hon. Secretary of the Interior, under date of 6th inst., you are hereby instructed as follows:

1st. The survey and plat of mineral claims, required by section 2325, Revised Statutes of the United States, to be filed in the proper land office with application for patent, must be made subsequent to the recording of the location of the mine; and when the original location is made by survey of a United States Deputy Surveyor, such location survey cannot be substituted for that required by the statute as above indicated.

2d. The Surveyor-General should derive his information upon which to base his certificate as to the value of labor expended or improvements made, from his deputy who makes the actual survey and examination upon the premises, and such deputy should specify with particularity and full detail the character and extent of such improvements.

I desire also to call your attention to section 2320, U. S. Revised Statutes, referring to vein or lode claims, which requires that "the end lines of each claim shall be parallel to each other."

It appears that in some instances this explicit statutory requirement has been disregarded. Hereafter you will approve no survey of such claims unless the end lines thereof are parallel to each other.

Promptly instruct your deputy surveyors accordingly.

Very respectfully, U. J. BAXTER, *Acting Commissioner.*

DEPARTMENT OF THE INTERIOR,
General Land Office,
WASHINGTON, D. C., *January* 20, 1879.

REGISTERS AND RECEIVERS, *U. S. Land Offices:*

Hereafter, when a mineral entry is made in your office, you will promptly report the fact, with proper description, to the Surveyor-General of your district.

You will likewise report cancellations of mineral entries.

Respectfully, J. A. WILLIAMSON, *Commissioner.*

e. ANNUAL EXPENDITURE.

DEPARTMENT OF THE INTERIOR,
General Land Office, March 18, 1873.

The following is an act of Congress approved March 1, 1873, (see Part I., No. 6.)

By this legislation the requirements of the fifth section of the act of

May 10, 1872, are changed by extending the time for the first annual expenditure upon claims located prior to May 10, 1872, to June 10, 1874.

The requirements in regard to expenditures upon claims located since May 10, 1872, are in no way changed.

W. W. CURTIS, *Acting Commissioner.*

[A similar circular dated June 9, 1874, was issued under the act of June 6, 1874.—EDITOR.]

DEPARTMENT OF THE INTERIOR,
General Land Office,
WASHINGTON, D. C., *March* 5, 1875.

The following is an act of Congress approved February 11, 1875:
[See Part I., No. 8.]

By this legislation the requirements of section 2324 Revised Statutes [5th section of the Mining Act of May 10, 1872,] in regard to the expenditure upon mining claims, are so modified that money which has been or may be expended in running a tunnel for the purpose of developing one or more lodes owned by such persons or company, shall be considered as expended upon such lodes.

The expenditures required upon mining claims may be made from the surface, or in running a tunnel for the development of such claims.

S. S. BURDETT, *Commissioner.*

f. STONE AND TIMBER LANDS.

The first, second, and third sections of the act of Congress of June 3, 1878, [Part I. No. 13,] Circular Instructions, dated August 13, 1878, provide for the sale of surveyed lands in California, Oregon, Nevada, and in Washington Territory not yet proclaimed and offered at public sale, valuable chiefly for timber and stone, unfit for cultivation, and consequently for disposal under the pre-emption and homestead laws. When a party applies to purchase a tract thereunder, the register and receiver will require him to make affidavit that he is a citizen of the United States by birth or naturalization, or that he has declared his intention to become a citizen under the naturalization laws. If native born, parol evidence of that fact will be received; if not native born, record evidence of the prescribed qualification must be furnished. In connection therewith, he will be required to make the sworn statement in duplicate, according to the attached form, as provided for in the second section of the act. One of the duplicate statements filed in each is by the act required to be transmitted to this office, and the registers and receivers will accordingly send up with their monthly returns the duplicate statements to be transmitted for the month.

The evidence in regard to the publication of notice required to be furnished, in the third section of the act, must consist of the affidavit of the publisher or other person having charge of the newspaper in which the notice is published, with a copy of the notice attached thereto, setting forth the nature of his connection with the paper, and that the notice was duly published for the prescribed period. The evidence required in the same section with regard to the non-mineral character of the land, and its unoccupied and unimproved condition,

must consist of the testimony of at least two disinterested witnesses, to the effect that they know the facts to which they testify from personal inspection of the land and of each of its smallest legal subdivisions, as per form attached. This testimony may be taken before the register or receiver, or any officer using an official seal and authorized to administer oaths in the land district in which the land lies. Upon such proof being produced, if no adverse claim shall have been filed, the entry applied for may be allowed in pursuance of the provisions of the act. The receiver will issue his receipt for the purchase money, and the register his certificate of purchase, numbering the entry in the regular cash series. The register and receiver will enter the sale on their books and make the usual returns therefor to this office, noting on the monthly abstracts, opposite the entry, and on the entry papers, a reference to the act of Congress under which allowed. They will forward all the papers in the case with their returns to this office, except the retained duplicate statement filed under the second section of the act, to which the register will give the same number with the other papers for the entry, and retain it on the appropriate file with the formal application in his office.

The register and receiver will be entitled to a fee of five dollars each for allowing an entry under said act, and jointly at the rate of twenty-two cents and a half per hundred words for testimony reduced by them to writing for claimants, which will be accounted for as other fees.

If, at the expiration of the sixty days' notice provided for in the third section of the act, an adverse claim should be found to exist calling for an investigation, the register and receiver will allow the parties a hearing according to the rules of practice,

In case of an association of persons making application for such an entry, each of the persons must prove the requisite qualifications, and their names must appear in and be subscribed to the sworn statement, as in case of an individual person. They must also unite in the regular application for entry, which will be made in their joint names as in other cases of joint cash entry. The forms prescribed for cases of applications by individual persons may be adapted for use in applications of this class.

SWORN STATEMENT UNDER TIMBER AND STONE ACT OF JUNE 3, 1878.

LAND OFFICE AT———,
(*Date*)———, 18—.

I, ——— ———, of —— county, ——, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," for the purchase of the —— of section ——, township ——, of range ——, do solemnly —— that I* ——; that the said land is unfit for cultivation, and valuable chiefly for its ——; that it is uninhabited; that it contains no mining or other improvements ——; nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said act; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title

*In case the party has been naturalized, or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

which I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself. ——— ———.

Sworn to and subscribed before me this —— day of ——, 18—.

——— ———,

———.

(The testimony of two witnesses, in this form, taken separately, required in each case.)

TESTIMONY OF WITNESS UNDER TIMBER AND STONE ACT OF JUNE 3, 1878.

——— ———, being called as a witness in support of the application of ——— ——— to purchase the —— of section ——, township ——, of range ——, testifies as follows:

Ques. 1. What is your post-office address, and where do you reside?

Ans. ———.

Ques. 2. What is your occupation?

Ans. ———.

Ques. 3. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. ———.

Ques. 4. When and in what manner was such inspection made?

Ans. ———.

Ques. 5. Is it occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by, or do not belong to, the said applicant?

Ans. ———.

Ques. 6. Is it fit for cultivation?

Ans. ———.

Ques. 7. What causes render it unfit for cultivation?

Ans. ———.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. ———.

Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. ———.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. ———.

Ques. 11. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except himself?

Ans. ———.

Ques. 12. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. ———.

——— ———.

I HEREBY CERTIFY that witness is a person of respectability; that each question and answer in the foregoing testimony was read to —— before —— signed —— name thereto, and that the same was subscribed and sworn to before me this —— day of ——, 18—.

——— ———,

———.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

TITLE LXX.—CRIMES.—CH. 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter, be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. [See Sec. 1750.]

g. SALINE LANDS.

CIRCULAR INSTRUCTIONS DATED APRIL 10, 1877.

The act of Congress of January 12, 1877, [Part I., No. 14], provides a mode of proceeding by which public lands indicated by the field-notes of survey, or otherwise, to be *saline in character* may be rendered subject to disposal.

Should *prima facie* evidence that certain tracts are saline in character be filed with the register and receiver of the proper land district, they will designate a time for a hearing at their office, and give notice to all parties in interest in order that they may have ample opportunity to be present with their witnesses.

At the hearing the witnesses will be thoroughly examined with regard to the true character of the land, and whether the same contains any known mines of gold, silver, cinnabar, lead, tin, copper, or other valuable mineral deposit, or any deposit of coal.

The witnesses will also be examined in regard to the extent of the saline deposits upon the given tracts, and whether the same are claimed by any person; if so, the names of the claimants, and the extent of their improvements must be shown.

The testimony should also show the agricultural capacities of the land, what kind of crops, if any, have been raised thereon, and the value thereof. The testimony should be as full and complete as possible, and, in addition to the leading points indicated above, everything of importance bearing upon the question of the character of the land should be elicited at the hearing.

The register and receiver will transmit the testimony to this office with their joint opinion thereon. When the case comes before this office, such a decision will be rendered in regard to the character of the land as the law and the facts may warrant.

Should the given tracts be adjudged agricultural, they will be subject to disposal as such. Should the tracts be adjudged *saline lands*, the register and receiver will be instructed to offer the same for sale, after public notice, at the local land office of the district in which the same shall be situated, and to sell said tract or tracts to the highest bidder for cash, at a price of not less than $1.25 per acre.

In case said lands fail to sell when so offered, the same will be subject to private sale at such land office for cash, at a price of not less than $1.25 per acre, in the same manner as other public lands are sold.

The provisions of this act do not apply to any lands within the Territories, nor to any within the States of Mississippi, Louisiana, Florida, California, and Nevada, none of which have had a grant of salines by act of Congress. J. A. WILLIAMSON, *Commissioner*.

To Registers and Receivers.

h. COAL LANDS.

DEPARTMENT OF THE INTERIOR,
General Land Office,
WASHINGTON, D. C., *April* 15, 1880.

GENTLEMEN: The act of Congress approved March 3, 1873, entitled "An Act to provide for the sale of the lands of the United States containing coal," is as follows, to wit: [See Part I., No. 1, Revised Statutes, Sections 2347 to 2352 inclusive.]

Your attention is called to the following points:

1. The sale of coal-lands is provided for—
   1. By ordinary private entry under section 1.
   2. By granting a preference right of purchase based on priority of possession and improvement under section 2.

2. The land entered under either section must be *by legal subdivisions*, as made by the regular United States survey. Entry is confined to surveyed lands; to such as are vacant, not otherwise appropriated, reserved by competent authority, or containing valuable minerals other than coal.

3. Individuals and associations may purchase. If an individual, he must be twenty-one years of age and a citizen of the United States, or have declared his intention to become such citizen.

4. If any association of persons, each must be qualified as above.

5. A person is not disqualified by the ownership of any quantity of other land, nor by having removed from his own land in the same State or Territory.

6. Any individual may enter by legal subdivisions as aforesaid any area not exceeding one hundred and sixty acres.

7. Any association may enter not to exceed three hundred and twenty acres.

8. Any association of not less than four persons, duly qualified, who shall have expended not less than $5,000 in working and improving any coal mine or mines, may enter under section 2 not exceeding six hundred and forty acres, including such mining improvements.

9. The price per acre is $10 where the land is situated *more* than fifteen miles from any completed railroad, and $20 per acre where the land is *within* fifteen miles of such road.

10. Where the land lies *partly within* fifteen miles of such road and in *part outside* such limit, the *maximum* price must be paid for all legal subdivisions the greater part of which lies within fifteen miles of such road.

11. The term "completed railroad" is held to mean one which is actually constructed on the face of the earth; and lands within fifteen miles of any point of a railroad so constructed will be held and disposed of at $20 per acre.

12. Any duly qualified person or association must be preferred as purchasers of those public lands on which they have opened and improved, or shall open and improve, any coal mine or mines, and which they shall have in actual possession.

13. Possession by agent is recognized as the possession of the principal. The clearest proof on the point of agency must, however, be required in every case, and a clearly-defined possession must be established.

14. The *opening and improving* of a coal mine, in order to confer a preference right of purchase, must not be considered as a mere matter of form; the labor expended and improvements made must be such as to clearly indicate the good faith of the claimant.

15. These lands are intended to be sold, where there are adverse claimants therefor, to the party who, by substantial improvements, actual possession, and a reasonable industry, shows an intention to continue his development of the mines, in preference to those who would purchase for speculative purposes only. With this view, you will require such proof of compliance with the law, when lands are applied for under section 2 by adverse claimants, as the circumstances of each case may justify.

16. In conflicting claims, where improvement has been made *prior to March* 3, 1873, you will, if each party make subsequent compliance with the law, award the land *by legal subdivisions*, so as to secure to each as far as possible his valuable improvements; there being no provision in the act allowing a joint entry by parties claiming separate portions of the same legal subdivision.

17. In conflicts, when improvements, etc., have been commenced subsequent to March 3, 1873, or shall be hereafter commenced, priority of possession and improvement shall govern the award when the law has been fully complied with by each party. A mere possession, however, without satisfactory improvements, will not secure the tract to the first occupant when a subsequent claimant shows his full compliance with the law.

18. After an entry has been allowed to one party, you will make no investigation concerning it at the instance of any person except on instructions from this office. You will, however, receive all affidavits concerning such case and forward the same to this office, accompanied by a statement of the facts as shown by your records.

19. Prior to entry, it is competent for you to order an investigation, on sufficient grounds set forth under oath of a party in interest and substantiated by the affidavits of disinterested and credible witnesses.

20. Notice of contest, in every case where the same is practicable, must be made by reading it to the party to be cited, and by leaving a copy with him. This notice must proceed from your office and be signed by the register or receiver. Where such personal service cannot be made by reason of the absence of the party, and because his whereabouts are unknown, a copy may be left at his residence, or, if this is unknown, by posting a copy in a conspicuous place on the tract in controversy, and by publication in a weekly newspaper having the largest general circulation in the vicinity of the land (where no newspaper shall be specified by this office) for five consecutive insertions, covering a period of four weeks next prior to the trial; and in each case requiring such notice a copy must be forwarded with the returns to this office, accompanied with proof of service by affidavit indorsed thereon.

21. In every case of contest, all papers in the same must be forwarded to this office for review before an entry is allowed to either party.

22. Thirty days from your decision will be allowed by you to enable any party to take an appeal, or file argument to be fowarded to this office.

23. No appeal will be entertained unless the same shall be forwarded through the district land-office.

24. The party may still further appeal from the decision of the Commissioner of the General Land Office to the Secretary of the Interior. The appeal must be taken within sixty days after service of notice on the party. This may be filed with the district land-officers and by them forwarded, or it may be filed with the Commissioner, and must recite the points of exception.

25. If not appealed, the decision is by law made final. (See Section 10, act of June 12, 1858, United States Statutes, volume 11, page 326.) After appeal, thirty days are usually allowed for filing arguments, and the case is then sent to the Secretary, whose decision is final and conclusive.

26. Manner of obtaining title: First, by private entry. The party will present the following application to the register, and will make oath to the same:

I, ——— ———, hereby apply, under the provision of the act approved March 3, 1873, entitled "An Act to provide for the sale of the lands of the United States containing coal," to purchase the ——— quarter of section ———, in township ——— of range ———, in the district of lands subject to sale at the land-office at ———, and containing ——— acres; and I solemnly swear that no portion of said tract is in the possession of any other party; that I am twenty-one years of age, a citizen of the United States (or have declared my intention to become a citizen of the United States,) and have never held nor purchased lands under said act, either as an individual or as a member of an association; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal. So help me God.

——— ———.

To this affidavit the register will append the usual jurat.

27. Thereupon the register, if the tract is vacant, will so certify to the receiver, stating the price, and the applicant must then pay the amount of purchase-money.

28. The receiver will then issue to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sale to the General Land Office, from whence, when the proceedings are found regular, a patent or complete title will be issued; and on surrender of the duplicate receipt such patent will be delivered, at the option of the patentee, either by the Commissioner at Washington or by the register at the district land-office.

29. This disposition at private entry will be subject to any valid prior adverse right which may have attached to the same land, and which is protected by section 2.

30. Second. When the application to purchase is based on a priority of possession, etc., as provided for in section 2, the claimant must, when the township plat is on file in your office, file his declaratory statement for the tract claimed sixty days from and after the first day of his actual posssession and improvement. Sixty days, exclusive of the first day of possession, etc., must be allowed.

31. The declaratory statement must be substantially as follows, to wit:

I, ——— ———, being ——— years of age, and a citizen of the United States (or having declared my intention to become a citizen of the United States), and never having, either as an individual or as a member of an association, held or purchased any coal-lands under the act approved March 3, 1873, entitled "An Act to provide for the sale of the land of the United States containing coal," do hereby declare my intention to purchase, under the provisions of said act, the ——— quarter of section ———, in township ——— of range ———, of lands subject to sale at the district land-office at ———, and that I came into possession of said tract on the ——— day of ———, A. D. 18—, and have ever since remained in actual possession continuously, and have expended in labor and improvements on said mine the sum of ——— dollars, the labor and improvements being as follows: (here describe the nature and character of the improvements;) and I do furthermore solemnly swear that I am well acquanted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal. ——— ———.

32. When the township plat is not on file at date of claimant's first possession, the declaratory statement must be filed within sixty days from the filing of such plat in your office.

33. When improvements shall have been made prior to June 4, 1873, the declaratory statement must be filed within sixty days from that date.

34. No sale under this act will be allowed by you prior to September 4, 1873. One year from and after the expiration of the period allowed for filing the declaratory statement is given within which to make proof and payment, but you will allow no party to make final proof and payment, except on notice as aforesaid to all others who appear on your records as claimants to the same tracts.

35. A party who otherwise complies with the law may enter *after* the expiration of said year, *provided* no valid adverse right shall have intervened. He postpones his entry beyond said year at his own risk, and the Government cannot thereafter protect him against another who complies with the law, and the value of his improvements can have no weight in his favor.

36. One person can have the benefit of one entry or filing *only*. He is disqualified by having made such entry or filing, alone or as a member of an association. No entry can be allowed an association which has in it a single person thus disqualified, as the law prohibits the entry or holding of more than one claim either by an individual or an association. You are to allow no entry, under this act, of lands containing other valuable minerals. You will determine the character of the land under the present rules relative to agricultural and mineral lands. Those that are sufficiently valuable for other minerals to prevent their entry as agricultural lands cannot be entered under this act.

37. Assignments of the right to purchase under this act will be recognized when properly executed. Proof and payment must be made, however, within the prescribed period, which dates from the first day of the possession of the assignor who initiated the claim.

38. You will so construe this act in its application as not to destroy or impair any rights which may have attached prior to March 3, 1873. Those persons who may have initiated a valid claim under any prior law relative to coal-lands will be permitted to complete their entries under the same.

39. You will report at the close of each month as "sales of coal-lands" all filings and entries under this act in separate abstracts, commencing with number *one*, and thereafter proceeding consecutively in the order of their reception. Where a series of numbers has already been commenced by sale of coal-lands you will continue the same without change. The affidavit required from each claimant at the time of actual purchase will be as follows, to wit:

I, ——— ———, claiming the right of purchase under the act of Congress entitled "An Act to provide for the sale of the lands of the United States containing coal," approved March 3, 1873, to the ——— quarter of section ———, in township ——— of range ———, subject to sale at ———, do solemnly swear that I have never had the right of purchase under this act, either as an individual or as a member of an association, and that I have never held any other lands under its provisions; I further swear that I have expended in developing coal mines on said tract in labor and improvements the sum of ——— dollars, the nature of such improvements being as follows: ——— ——— ———; that I am now in the actual possession of said mines, and make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal. So help me God.

——— ———.

I, ——— ———, of the land-office at ———, do hereby certify that the above affidavit was sworn and subscribed to before me this ——— day of ———, A. D. 18—.

——— ———.

40. In case the purchaser shows by an affidavit that he is not personally acquainted with the character of the land, his duly authorized agent who possesses such knowledge may make the required affidavit as to its character; but whether this affidavit is made by principal or agent, it must be corroborated by the affidavits of two disinterested and credible witnesses having knowledge of its character.

J. A. WILLIAMSON,
Commissioner.

To Registers and Receivers.

[For instructions under the coal acts of 1864 and 1865, see COPP'S PUBLIC LAND LAWS, pp. 601, 664.]

PART III.

LAND OFFICE RULINGS.

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a. UNDER THE GENERAL MINING LAWS.

AFFIDAVITS AND WITNESSES.

There is no compulsory process to secure the attendance of witnesses before the local officers. Parties serve their own subpœnas and may be witnesses in their own behalf. *Ex-parte* affidavits may be received in applications for patents.

Commissioner Joseph S. Wilson to Register and Receiver, Helena, Montana, August 15, 1868.

The law provides no compulsory process to secure the attendance of witnesses before registers and receivers, neither as to proceedings under the mining, the pre-emption, nor the homestead acts, no instance being remembered of any particular difficulty arising from this want of power. Parties serve their own subpœnas, and it can seldom happen that a *bona fide* claimant will experience any trouble in obtaining the necessary testimony.

Ex-parte affidavits may be received generally in applications under the mining act; reasonable care being required on the part of the register and receiver, not to suffer themselves to be imposed upon by pretended affidavits or reckless or dishonest witnesses.

The officers before whom the affidavit is made should usually be able to certify to the credibility of the witness; yet where such is not the case, and the deponent is a stranger to you, it will be proper for you to require his character for truth to be established to your satisfaction, before giving credit to his affidavit, in all cases where the question deposed to is not merely technical, but goes to the merits of the claim.

The law requires that you should be satisfied of the truth of the testimony offered, in whatever form it may be presented; and, in arriving at this result, you are not to be cramped by any technical rules, but are left to the exercise of sound judgment, and an honest, upright purpose to perform your duties faithfully.

Congress has prescribed the policy of not excluding any witness in the courts of the United States, on account of being a party to, or interested in, the issue tried. The same rule should be observed in proceedings before the Executive Departments, and you are instructed to be governed by that principle.

The weight of the evidence is of course still a matter for your judgment, as in all other cases where a witness may be supposed to be

laboring under a bias, or to have a stronger motive to incline to one side more than the other, in his testimony.

HOW LAND PATENTS ARE ASSIGNED.

Commissioner Wilson to G. W. Warren, Boston, Mass., Jan. 21, 1869.

There are no regulations or rules governing the assignment of patents issued by the General Land Office. Such patents are deeds, conveying to the grantees the title to certain land previously existing in the United States; and if these parties desire to transfer to others the title thus acquired, they must of course conform to the laws of the *locus rei sitæ* [State or Territory] relating to the conveyance of realty.

DECISIONS OF COURTS.

Commissioner Wilson to Hon. A. A. Sargent, Washington, D. C., January 26, 1869.

* * * It may be true that the Inimitable Company lost its case in the California court, through its attorneys; but if so, the injury is one this office has no power to correct. It can neither supervise nor disregard the decisions rendered by such courts in cases of conflicting claims to the possession of mining property under the local customs, and until the Inimitable Company can procure a reversal of the judgment in the above case, no patent can be issued to it for the premises in controversy.

PATENT.

Proceedings when duplicate receiver's receipt cannot be found.

Commissioner Wilson to Register and Receiver, Central City, Colorado, April 18, 1870.

You state that you have received a letter from G. F. Ladd, esq., Secretary of the Cascade Silver Mining Company, to the effect that duplicate receipt for Mineral Entry No. 11, Cascade lode, has been lost, and after careful and diligent search cannot be found, and desiring to be informed how he can obtain the patent.

The patent may be transmitted to Mr. Ladd, upon a compliance with the following conditions, viz.:

1st. That he furnish you with satisfactory proof, under the corporate seal of the company, that he is the duly elected secretary thereof, and authorized to receive the patent for their claim; and

2d. His affidavit setting forth that he was in possession of said duplicate receipt, No. 11, for the Cascade lode; that the same has been lost; and that, up to the present time, after careful and diligent search, he is unable to find it.

This affidavit must be taken before an officer duly qualified to administer oaths, and attested by his seal; and upon filing the same, with the evidence before recited, the patent may be sent to him, requesting an acknowledgment of its receipt.

SCHOOL SECTIONS.

Sections sixteen and thirty-six, embracing mineral lands, are not granted to the State of Nevada.

Commissioner Wilson to Register and Receiver, Carson City, Nevada, May 24, 1870:

As to the right of the State of Nevada to Sections Sixteen and Thirty-

six as school lands, when the same are known to contain valuable minerals, I have to state that the question was submitted to the Secretary of the Interior, with the views of this office thereon; the concurring opinion of the head of the department on the subject, being shown in the inclosed copy of his letter.

The State Register will be allowed to select other lands as indemnity, when School Sections Nos. Sixteen and Thirty-six are found to be mineral.

Inclosure.

In the inclosed letter, dated May 20, 1870, Secretary J. D. Cox said:

The seventh section of the enabling act of 21st March, 1864, passed at the first session of the 38th Congress, grants to said State said sections, unless sold or otherwise disposed of by any act of Congress.

Joint resolution of the 30th January, 1865 (13 Stat., 567), declares: "That no act passed at the first session of the 38th Congress, granting lands to States or corporations, to aid in the construction of roads, or *for other purposes*, or to extend the time of grants heretofore made, shall be so construed as to embrace mineral lands, which in all cases shall be, and are, reserved exclusively to the United States, unless otherwise specially provided in the act, or acts, making the grant."

This joint resolution prescribes a rule of construction which, applied to the act, would exclude from its operation mineral lands. Such lands are reserved exclusively to the United States, unless "otherwise specially provided" in the act making the grant.

PURCHASE MONEY.

Commissioner Wilson to Register and Receiver, Fairplay, Colorado, September 14, 1870.

There is no provision of law, or regulation of this office, by which the money paid for a mining claim may be refunded, when a decision is made reducing the extent of a claim, except for so much of the superficies as is not included in the reserves necessary to cause the claim to conform to the local laws and customs of the miners.

When a decision is rendered, by which a claim erroneously entered is reduced in size, the purchase money will be returned, to the extent necessary to make the payment meet the requirement of the law, to wit: five dollars per acre or fractional part of an acre, for the area actually embraced by the survey made, in accordance with such decision.

SAN AUGUSTIN MINE.

Locations in New Mexico, in cases of newly discovered and abandoned mines.

Commissioner Wilson to Register and Receiver, Santa Fe, New Mexico, September 22, 1870.

This office has examined the papers in the case of the San Augustin Mining Company's application for a patent for a certain tract of mineral land in township 22 south, of range 3 east, in Doña Aña County, New Mexico, the said tract being claimed by these applicants, under the name of the "San Augustin Mine."

But even if there had been no opposition to the claim, it is not perceived how a patent could issue to the company for the number of feet applied for, to wit: 3,000 feet along the course of the lode, for the following reasons, viz:

On the 18th of January, 1855, the legislature of the Territory of New Mexico passed "an act concerning mining claims," which, among other things, provides as follows: "That every discoverer of a lode, ledge or vein of gold-bearing quartz, or of a lode, crevice or deposit of silver, cinnabar, copper, lead, coal, or any other ore, or the same mixed with other metals or ores, shall have the privilege of locating and holding as against all persons and powers, except the United States, six hundred feet of the length of such lode, ledge, vein, deposit or crevice," etc.

The act provides also, that other persons may each locate three hundred feet of the length of such lode, ledge, vein, deposit, or crevice, etc., and after specifying the manner in which such locations are to be perfected and recorded, prescribes the policy to be observed with regard to abandoned mines, or those "upon which mining has not been prosecuted regularly for a period of ten years or more."

Such mines are declared, by the seventh section of the act, "vacant and abandoned," and liable to the operation of this act, as fully in all respects, as if they had never been occupied or denounced, and he, or they, who shall re-occupy such vacant and abandoned mines, shall be entitled to all the rights and privileges of original discoverers, as provided in this act. Companies of two or more persons, incorporated or otherwise, shall have the same rights and privileges under this act, as single or natural persons, and locate and hold, in manner aforesaid, one mining claim of three hundred feet for each member of the company, and one discovery claim; *provided*, no company shall locate more than four claims, including one discovery claim, or one thousand five hundred feet in all, upon any one vein or mine. *Provided further;* a company may acquire by purchase but four mining claims, and this under the same conditions that bound the vendors."

From this it will be seen, that while the territorial law regulating mining claims in New Mexico fixes the maximum of a company location at 1,500 feet, being only half the maximum prescribed by the Congressional enactment, it fixes the extent of individual locations at 300 feet, or 100 feet in excess of the Congressional limit.

In dealing therefore with claims in New Mexico, located between the dates of January 18, 1855, and July 26, 1866, the said territorial law will be recognized in all respects; but with regard to locations made subsequent to July 26, 1866, it is ruled:

1. That no individual location can exceed 200 linear feet along the course of the vein or lode, except in the case of the discoverer, who is entitled to an additional claim of 200 feet.

2. That no company location can exceed 1,500 linear feet along the course of the vein or lode, and such location cannot in any case be made at a rate exceeding 200 feet to each member of the company, (except one of them is the discoverer, to whom 200 feet additional are allowed) and to allow a company to locate (since the passage of said act of Congress) such quantity as would exceed 200 feet to each member, other than the discoverer, would be illegal and void.

This restriction to 1,500 feet is applicable only to company locations, and is not held to affect their right to purchase the possessory titles to as many adjoining claims upon the same lode, as may be authorized by said territorial law, which limits such right to purchase to

four claims, and as a "claim," since the date of the local laws act of Congress, cannot *exceed* 200 linear feet of a vado Territory; company having made an original location of 1,500 feet, f, are claimed fied, cannot by purchase obtain a right to more than 8y; and said feet on the same lode, or 2,300 feet in the aggregate, beinwithout in- by virtue of location and discovery, and 800 feet by purchases follows: ing locators. west half

In regard to locations made prior to the passage of the tark and law aforesaid, the land officers will require proof that the clain make accordance with the local customs or regulations of the miners district in which such claim is situated. In the case under consiWil- tion, a copy of the laws and regulations, adopted October 10th, 18all by the miners of "Organ Mountain Mining District," is introduct as a part of the evidence, but as they are not shown to have had any authority to enact regulations not in accordance with the existing law of the Territory, they can receive no consideration by this office.

In acting upon claims hereafter, you will be governed by this decision.

PLACER PATENTS.

Several placer tracts, not contiguous but in the same neighborhood, may be embraced in one application for patent.

Commissioner Wilson to Hon. A. A. Sargent, Washington, November 19, 1870.

Where several placer claims have been surveyed by the United States for an individual or company holding the possessory right thereto, under the local laws, there is nothing to prevent the patenting of the several tracts or parcels of mineral ground thus surveyed as a single entry, and the local land officers will be instructed accordingly.

With regard to the matter of newspaper publication in such cases, one notice may include a description of all the tracts or parcels desired to be entered by an individual or company holding the same, as aforesaid. But such notice must give a sufficiently accurate description of each parcel or tract applied for, as will enable other parties in the neighborhood to tell readily what mineral grounds are sought to be patented.

In these cases, it is not deemed proper to make any departure from our regulations, requiring diagram and notice to be posted on the claim for ninety days, as required by law; it being considered essential that a diagram of each parcel, together with a copy of the notice of intention to apply for a patent therefor, should be posted thereon for ninety days. The notice, to be posted for a like period in the register's office, may consist of a copy of that published in the newspaper, as aforesaid.

The foregoing it is not intended should be understood as authorizing the joint entry of parcels or claims situated at wide distances from each other in different land or mining districts, but simply to enable individuals or companies holding several placer claims in the same neighborhood, though not contiguous, to effect their entries, and have their rights adjudicated with as little expense as possible.

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re exist any misapprehension upon the subject, it is
o state, and you will be particular to so inform all the
erest, that in every patent issued by this office for either a
placer claim, a condition, in view of the fifth section of the
g act, is inserted as follows, viz:

"That in absence of necessary legislation by Congress, the Legislature of ——— may provide rules for working the mine hereby granted, involving easements, drainage, and other necessary means to its complete development."

It is believed that this condition gives to the Legislature of the State or Territory in which a patented claim is situated, ample power and authority for the enactment of all necessary rules and regulations for the proper working and development of the mines, and this as completely in regard to water ditches and flumes, as in any other respect; and if parties have, by virtue of compliance with local laws, customs, or regulations of miners, or by decisions of courts, acquired the right to construct and maintain ditches or flumes across the mining grounds occupied by others, it is not perceived how their rights in this respect will be impaired by the issuing of a patent, or that, if necessary, the aid of the courts may not be invoked, as well after the issuance of a patent as before it.

TERRIBLE *vs.* GUNBOAT.

Foreign companies cannot set up an adverse claim to unpatented ground. Claims cannot be located for the Miners' Relief and Territorial Poor Fund, of Colorado. Ground already patented will be excepted from a patent on a subsequent application, crossing the prior patented claim.

Commissioner Drummond to Register and Receiver, Central City, Colorado, June 7, 1871.

With your letter of date the twenty-fourth March last, were received the papers and your report in the matter of an application of William A. Hamill, for a patent for certain mining premises, called the Gunboat lode, situate in Clear Creek county, Colorado Territory.

* * * On the eleventh August, 1870, Robert O. Old, agent and superintendent of the Colorado Terrible Lode Mining Company, filed in your office his sworn statement, protesting against the survey and entry of said premises claimed by Hamill, "for the reason that said premises are not the property of said William A. Hamill, and the said

applicant is not entitled to hold the same under and by the local laws of said Griffith mining district, nor the laws of Colorado Territory; and because the same premises, or some portion thereof, are claimed adversely by the Colorado Terrible Lode Mining Company; and said premises, as described in said diagram, cannot be entered without interfering with certain property owned by it, and described as follows: The west seven hundred feet of the Terrible lode, to wit: the west half of property for which United States patent issued to Fred A. Clark and Henry Crow, on the fourth day of December, 1869, and therefore make this adverse claim."

On the nineteenth day of November, 1870, the said claimant, William A. Hamill, relinquished "from said application for patent all claim for patent to said east seven hundred (700) feet of said Gunboat lode, under the above application, hereby expressly declaring my intention not to relinquish any rights I may have to the east seven hundred feet of said lode, under the provisions of the local laws."

* * * With reference to that portion of the affidavit of the agent of the Colorado Terrible Lode Mining Company, which alleges that the application of Hamill for patent for the westerly seven hundred feet of the Gunboat lode, "commences on, covers, and is identical with a part of the seven hundred feet of the Terrible lode, which was patented to Frederick A. Clark and Henry Crow, and by them deeded to said company," it is proper to state that an examination of the plat of the final survey, showing the relative positions of these claims, fails to substantiate this alleged interference further than to show that post No. 6, at the north-east corner of the Gunboat survey, is a few feet inside the westerly limits of the surface ground patented with said Terrible lode; but inasmuch as no patent will issue on this survey of the Gunboat, without a special clause excepting from the conveyance any portion of the fourteen hundred feet of the Terrible lode and surface ground patented therewith, it is not perceived that this portion of said company's objections is entitled to further consideration.

The company's further objection appears to be, in effect, that Hamill's said application and survey covers one hundred feet of mining ground adjoining and immediately beyond the westerly end line of the said patented Terrible lode.

Their alleged possessory title to this disputed hundred feet of ground appears to have originated in a location thereof, made and recorded on the thirteenth day of December, 1866, as Claim No. 1, West, on the Terrible lode, in the name of the "Miners' Relief and Territorial Poor Fund," which was sold on the twelfth of July, 1869, by the County Treasurer to Fred. A. Clark and Henry Crow, who, on the eleventh of April, 1870, conveyed the same to said company,

But on the thirteenth day of December, 1866, the date of this location, the Congressional Mining Law had been in force some months, and under it there was no authority for such location as this, inasmuch as the "Miners' Relief and Territorial Poor Fund," was neither a person, nor an association of persons; was without legal existence, and powerless and incapacitated to "occupy and improve" a claim, or perform those acts of ownership or possession required of miners, as conditions essential to the holding of claims, or of proceeding to make payment to the government and obtain patent.

This office, therefore, declines to give further consideration to the right of said company to oppose said application, ruling that the said location was void *ab initio*, and that they acquired nothing by their purchase thereof from Clark and Crow, as aforesaid, those parties having no interest therein whatever to convey.

It likewise appears from the papers that the said "Colorado Terrible Lode Mining Company," is a corporation created and existing under the laws of England, and is therefore not a citizen of the United States and not capable of asserting a claim to any portion of the public land of the United States, or of receiving from the government a title therefor in any event.

FRANKLIN LODE.

Liens on mining claims are protected and strengthened by patent.

Commissioner Drummond to Register and Receiver, Central City, Colorado, June 19, 1871.

With regard to the question of the lien claimed by the said adverse parties upon a portion of the property, it will be perceived by a reference to the thirteenth section of the Amendatory Mining Act of 9th July, 1870, (which constitutes a part of the original mining enactments) that a proviso is contained therein, "That nothing in this act shall be deemed to impair any lien, which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent."

If therefore, as alleged, the parties opposing this application have such lien upon the premises, or any portion thereof, they are fully protected by the law of Congress itself, and after the patent shall have been issued to the applicants, thus quieting the title, the parties claiming such lien will be in a much better condition to enforce it than if the question of titles was undetermined.

ROCK IN PLACE DEFINED.

Commissioner Drummond to Hon. Thomas Boles, Dardanelle, Arkansas, July 20, 1871.

The term "rock in place," as used in the mining acts of Congress, has always received the most liberal construction that the language will admit of, and every class of claims that, either according to scientific accuracy or popular usage, can be classed and applied for as a "vein or lode," may be patented under this law.

The plain object of the law is to dispose of the mineral lands of the United States for money value; and it is a matter of indifference to Government, whether the metal occurs in the form of a true or false vein.

It may be observed, as an important point, that no proof is required to establish the vein formation of the deposit. The law requires the Surveyor-general to certify "to the character of the vein exposed;" but this is understood to mean that the certificate should show whether the vein exposed contains gold, silver, cinnabar, or copper.

DISTRICT LAWS, IN THE ABSENCE OF STATE OR TERRITORIAL STATUTES, GOVERN EXTENT OF LOCATIONS.

Commissioner Drummond to E. J. Masters, Columbia, California, August 25, 1871.

The acts of Congress limit the right to apply for and receive patents for mining claims to those who have occupied and improved their claims in accordance with the local laws, customs and rules of miners.

In the absence of any State or Territorial enactment regulating the occupancy and possession of mining claims, miners may alter or amend the laws of the district; but this action will not affect claims already located, as a claim must conform to the laws in force at the date of its location.

Should the miners deem it advisable to amend their district laws, they may re-locate their claims under and conformably to such amended laws, and upon complying with the acts of Congress and the instructions of this office, may enter and receive patents for the same.

CINNABAR AND COPPER DEPOSITS.

Commissioner Drummond to J. E Morgan, Clayton, California, August 26, 1871.

As copper and cinnabar are found in "rock in place," rather than in the form of placers, parties desiring to obtain patents for lands valuable on account of the deposits of cinnabar or copper, must enter the same as lode claims.

PUBLIC HIGHWAY.

Commissioner Drummond to Williams & Carpenter, Sacramento, California, December 29, 1871.

It would appear from Mr. Mulli's affidavit that his whole objection to the granting of a patent on said application, is based upon the fact that 224 feet of a certain public highway is embraced thereby.

As the right of way is fully protected by said eighth section (act of July 26, 1866), Mr. Mulli's protest is not such an adverse claim as is contemplated by said sixth section (Act of July 26, 1866). Should a patent be issued upon said application of Mr. Blakely, the right of all parties to the use of said highway will be as secure under the law, as if the title had remained in the Government.

EXEMPLIFICATIONS OF PATENTS AND PAPERS.

Commissioner Drummond to John N. Whiting, New York City, January 2, 1872.

Before the desired exemplification [certified copy of a patent for the Daniel Peters lode,] can be furnished, it will be incumbent upon you to show what interest you, or those for whom you are acting, have in the premises in question, in order that this office may be able to determine whether, under the law, the exemplification can properly be furnished.

AURIFEROUS CEMENT CLAIMS.

Commissioner Drummond to Thomas N. Stoddard, Sonora, California, February 12, 1872:

If it was intended to ask if the auriferous cement claims, found in what are sometimes called ancient river beds, and usually worked by

the hydraulic process, properly come within the signification of the term "rock in place," the answer must be in the negative; several claims of that character having already been patented under the placer mining law of July 9th, 1870, they fully coming within the meaning of the term "placer" as defined in said act.

ALGER LODE.

Interested parties alone can assert an adverse claim.

Commissioner Drummond to Register and Receiver, Central City, Colorado, March 4, 1872.

Before a survey of the claim was made or approved by the Surveyor-General, Joseph M. Marshall filed his sworn statement, to the effect that said application of Tascher embraces and is identical with claim No. 13 East, on the Kansas lode, owned by the Empire State Texas and Lincoln Gold Mining Company, of Colorado, in whose behalf he files this sworn statement, "solely that justice may be done in the premises, and the said company protected in their title to said property,"

This affiant is not shown to have any interest whatever in the premises, or any authority for appearing in behalf of said company, even if any such exists, a fact not established, however, by the papers.

The sixth section of the mining act provides that, "whenever any adverse claimants to any mine, located and claimed as aforesaid, shall appear," etc.

Mr. Marshall having no interest whatever in the mine, "located and claimed as aforesaid," and no authority to represent parties having such interest, his affidavit entirely fails as an adverse claim upon which to suspend proceedings under the act, even if he had furnished the abstract of title or proof of possessory right of said company to the Kansas lode, as required by circular instructions.

WATER RIGHTS.

A special clause, protecting water rights, is inserted in patents issued for lands in the mining States and Territories.

Commissioner Drummond to Hon. A. A. Sargent, Washington, D. C., March 21, 1872.

I am satisfied that rights to the use of water for mining, manufacturing, agricultural, or other purposes, and rights for the construction of ditches and canals, used in connection with such water rights, are fully protected by law; yet, in order that all misapprehension that might exist between the holder or claimant of such right and such patentee might be set at rest, it was determined, in all patents hereafter granted in mineral regions of the United States, to insert an additional clause or condition, expressly protecting and reserving such water rights, and making the patent subject thereto, the same as before it was granted.

WASHINGTON LODE.

Patent may be delivered to owner of a mine, though he may not be the person named in the application or patent.

Acting Commissioner W. W. Curtis to Register and Receiver, Central City, Colorado, April 4, 1872.

Said claim was, on the fifteenth February, 1871, patented to said

applicants in their incorporate name, to wit: to the Chicago and Clear Creek Gold and Silver Mining Company, and the patent was transmitted to you for delivery with letter of February 18, 1871.

On the eighteenth ultimo, this office received a letter from the Receiver at Central City, Colorado, inclosing a number of papers, and stating that said final survey of the Washington lode was applied for May 11, 1870, and money therefor deposited by Alex. Huyett, a stockholder in said company; that said Huyett exhibited a letter of authority, signed by the secretary of said company, instructing him to complete the application; that the entry was made August 30, 1870, and said Huyett informed that the duplicate receipt was ready for him; that he never called for it, but soon afterward went to Utah Territory, his whereabouts not being known to the Receiver.

The Receiver further states, that a communication was addressed to Wm. Aldrich, the President of said company, at Chicago, Illinois, but no reply was received, and that he is unable to find any representative of the company.

It appears from the papers now received, that Alfred Rollings, at the September term of the District Court for the County of Clear Creek and Territory of Colorado, recovered a judgment against the "Clear Creek Silver Mining Company" for the sum of $318.88 damages and $35.10 costs of suit, upon which judgment a special execution was issued, dated the seventh December, 1870, and directed to the Sheriff of said county, who afterward levied upon and sold, under said execution, "the whole of the Washington lode, situated upon the same mountain as the Veto lode, and the discovery shaft of which is about two hundred yards up the mountain from the discovery shaft of the said Veto lode and in a northwestern direction from the said Veto shaft, situated in Idaho Mining District, Clear Creek County, Colorado Territory," the said Alfred Rollings being the purchaser of said lode at said sale.

It further appears, that said Rollings afterward assigned one-half of his certificate of purchase, under said execution, to Ebenezer T. Wells, and that on the seventh November, 1871, the Sheriff conveyed the said lode by deed to said Rollings and Wells, who now apply to have the undelivered patent recalled and another issued to them for the same property, or that said patent be delivered to them as the rightful owners of the premises thereby conveyed.

In explanation of the misnomer in bringing this action, the said Rollings, under oath, deposes and says:

"That he did not, at the time of commencing his said suit, certainly know the true name of said corporation, but deponent knew that one Alex. Huyett, then of said Territory of Colorado, was a stockholder in the corporation, which was indebted to him, and deponent thereupon caused process in his suit to be served on said Huyett, as, according to the statute of the Territory of Colorado in that behalf, he lawfully might."

"Deponent further saith, that the corporation against which this demand and cause of action in his said suit existed, was the same corporation, by whatever name known, which had theretofore been in possession of the Washington lode, in Idaho District, County of Clear Creek and Territory of Colorado, and engaged in working the same, under the management and superintendence of one J. Augustine; that

one Alex. Huyett, lately of said County of Clear Creek, the same person upon whom the writ of attachment in deponent's said suit was served, was also a member of said corporation, and at times, during the absence of Augustine, had assumed to have charge of said Washington lode and the operations of said company therein, and that deponent's demand and cause of action, upon which in his said suit he obtained judgment, was for deponent's work and labor as a miner, done and performed, under the employment of said Augustine, upon and in the said Washington lode. Deponent further says, that he hath resided within the said Idaho District, and in the immediate vicinity thereof, during all the time for the past ——— years, and that there is no other lode called the Washington lode, or which is known or claimed by that name, in said Idaho District, save the one upon which deponent worked, and for his work upon which the demand in said suit occurred, and that no other corporation, save the one of which said Augustine was agent and said Huyett a member, and for which deponent worked as aforesaid, ever had possession of any part of said Washington lode, or ever asserted any claim thereto," etc.

The fourth section of the Practice Act of the Territory of Colorado, (Revised Statutes, p. 501,) provides that "In all suits against any incorporated company, summons shall be served on the president thereof, if he resides in the county, but if he do not reside in the county, or be absent from the county, or cannot be found, then the summons shall be served by leaving a copy thereof with any clerk, secretary, cashier or agent of said company, within such time and under such regulations as are herein provided for the service of such process in suits against natural persons. Provided, that if there shall be no such president, clerk, secretary, cashier or agent of said company to be found in said county, the summons aforesaid shall be served on some stockholder of said company, and such service shall in such cases be deemed as effectual and valid as if made on any of the officers of said company."

It appears that in the suit brought by Rollings, no officer or agent of the company could be found, and in accordance with said act the writ was served upon a stockholder in said company, the said Huyett.

The said Rollings alleges in his sworn statement, "that on or about the ——— day —— of ——— A. D., 1871, deponent and said Wells went into possession of said Washington lode; he is now in full possession of the said lode, and every part thereof, whereof the said company were at any time possessed, and of the workings and improvements therein and every part of said workings and improvements."

In consideration of the evidence presented, and of the fact that misnomer was not pleaded in abatement by the defendants in said action, who, on the contrary, allowed the case to go by default, it is decided that the said patent should be delivered to the said Rollings and Wells, who, it is quite satisfactorily shown, have the possessory title to the lode, thereby conveyed in view of said sheriff's deed.

You will deliver said patent accordingly.

WHEN A PATENT IS RECALLED.

Acting Commissioner Curtis to Hon. J. B. Chaffee, House of Representatives, April 5, 1872.

After a patent has once issued, it is contrary to the fixed policy of

the department to recall the same, unless it were shown that an error had been committed in the description of the tract, or a mistake made in the name of the patentee; such not being the case in the present instance, this office is unable to comply with the request of Mr. Wells that a new patent be issued for said Washington lode to Mr. Rollings and himself.

CHOLLAR POTOSI AND BULLION *vs.* JULIA.

When the surface rights of two claims do not conflict, the possibility of the future union of the two lodes embraced therein should not delay the sale of the land included in the respective claims, nor suspend an application for patent indefinitely to await developments.

Adjoining land is sold subject to the right of the first locator or patentee to follow his vein or lode thereunder, and the second claimant may be enjoined from taking the ore or minerals from such vein or lode.

Commissioner Drummond to Register and Receiver, Carson City, Nevada, May 27, 1872.

The papers in the matter of the applications of the Julia Gold and Silver Mining Company for patents for the Julia, Scheel, La Cata, South-east Extension of the Hale and Norcross, and the Sarah Ann lodes, have been examined.

The applications for patents for these claims were filed in the Register's office, September 30, 1871, and notice thereof given in the usual manner, by posting and publication for ninety days.

On the twenty-ninth of December, 1871, and before said period of notice had expired, Mr. Isaac L. Requa, the Superintendent of the Chollar Potosi mining company, filed in behalf of said company a sworn protest against patenting said claims, the nature of his objections being in effect as follows, to wit: That on the fourth of February, 1870, a patent was issued by the United States to said Chollar Potosi mining company, for their claim on the Comstock lode; that they are still the owners of the property described in said patent; that said lodes for which said Julia gold and silver mining company has made applications for patents, conflict with the claim of said Chollar Potosi mining company; that said lodes have no existence as separate and distinct lodes from said Comstock lode, "but, on the contrary, all bodies of quartz or other rock, in place or otherwise, bearing gold or silver, heretofore found or that may hereafter be found within the boundaries described in said application of said Julia gold and silver mining company, are parts and parcels of the said Comstock lode, and belong and appertain thereto, and there is no lode within said boundaries separate and distinct from said Comstock lode; and that said Chollar Potosi mining company therefore prays that all proceedings may be stayed until the rights of the respective parties may be adjudicated in the proper courts."

Upon consulting the records of this office, it is found that on the fourth day of February, 1870, a patent was issued to, and in favor of, said Chollar Potosi mining company, for 1400 linear feet of the Comstock lode, the premises so granted being bounded "on the east and on the west by the walls of the Comstock lode, not yet definitely ascertained, containing thirty-four (34) acres and seventy-four hundredths ($\frac{74}{100}$) of an acre of land, more or less, as represented in the following plat."

On the 18th of January, 1855, the legislature of the Territory of New Mexico passed "an act concerning mining claims," which, among other things, provides as follows: "That every discoverer of a lode, ledge or vein of gold-bearing quartz, or of a lode, crevice or deposit of silver, cinnabar, copper, lead, coal, or any other ore, or the same mixed with other metals or ores, shall have the privilege of locating and holding as against all persons and powers, except the United States, six hundred feet of the length of such lode, ledge, vein, deposit or crevice," etc.

The act provides also, that other persons may each locate three hundred feet of the length of such lode, ledge, vein, deposit, or crevice, etc., and after specifying the manner in which such locations are to be perfected and recorded, prescribes the policy to be observed with regard to abandoned mines, or those "upon which mining has not been prosecuted regularly for a period of ten years or more."

Such mines are declared, by the seventh section of the act, "vacant and abandoned," and liable to the operation of this act, as fully in all respects, as if they had never been occupied or denounced, and he, or they, who shall re-occupy such vacant and abandoned mines, shall be entitled to all the rights and privileges of original discoverers, as provided in this act. Companies of two or more persons, incorporated or otherwise, shall have the same rights and privileges under this act, as single or natural persons, and locate and hold, in manner aforesaid, one mining claim of three hundred feet for each member of the company, and one discovery claim; *provided*, no company shall locate more than four claims, including one discovery claim, or one thousand five hundred feet in all, upon any one vein or mine. *Provided further;* a company may acquire by purchase but four mining claims, and this under the same conditions that bound the vendors."

From this it will be seen, that while the territorial law regulating mining claims in New Mexico fixes the maximum of a company location at 1,500 feet, being only half the maximum prescribed by the Congressional enactment, it fixes the extent of individual locations at 300 feet, or 100 feet in excess of the Congressional limit.

In dealing therefore with claims in New Mexico, located between the dates of January 18, 1855, and July 26, 1866, the said territorial law will be recognized in all respects; but with regard to locations made subsequent to July 26, 1866, it is ruled:

1. That no individual location can exceed 200 linear feet along the course of the vein or lode, except in the case of the discoverer, who is entitled to an additional claim of 200 feet.

2. That no company location can exceed 1,500 linear feet along the course of the vein or lode, and such location cannot in any case be made at a rate exceeding 200 feet to each member of the company, (except one of them is the discoverer, to whom 200 feet additional are allowed) and to allow a company to locate (since the passage of said act of Congress) such quantity as would exceed 200 feet to each member, other than the discoverer, would be illegal and void.

This restriction to 1,500 feet is applicable only to company locations, and is not held to affect their right to purchase the possessory titles to as many adjoining claims upon the same lode, as may be authorized by said territorial law, which limits such right to purchase to

four claims, and as a "claim," since the date of the passage of said act of Congress, cannot *exceed* 200 linear feet of a vein or lode, a company having made an original location of 1,500 feet, as above specified, cannot by purchase obtain a right to more than 800 additional feet on the same lode, or 2,300 feet in the aggregate, being 1,500 feet by virtue of location and discovery, and 800 feet by purchase of adjoining locators.

In regard to locations made prior to the passage of the territorial law aforesaid, the land officers will require proof that the claim is in accordance with the local customs or regulations of the miners of the district in which such claim is situated. In the case under consideration, a copy of the laws and regulations, adopted October 10th, 1869, by the miners of "Organ Mountain Mining District," is introduced as a part of the evidence, but as they are not shown to have had any authority to enact regulations not in accordance with the existing law of the Territory, they can receive no consideration by this office.

In acting upon claims hereafter, you will be governed by this decision.

PLACER PATENTS.

Several placer tracts, not contiguous but in the same neighborhood, may be embraced in one application for patent.

Commissioner Wilson to Hon. A. A. Sargent, Washington, November 19, 1870.

Where several placer claims have been surveyed by the United States for an individual or company holding the possessory right thereto, under the local laws, there is nothing to prevent the patenting of the several tracts or parcels of mineral ground thus surveyed as a single entry, and the local land officers will be instructed accordingly.

With regard to the matter of newspaper publication in such cases, one notice may include a description of all the tracts or parcels desired to be entered by an individual or company holding the same, as aforesaid. But such notice must give a sufficiently accurate description of each parcel or tract applied for, as will enable other parties in the neighborhood to tell readily what mineral grounds are sought to be patented.

In these cases, it is not deemed proper to make any departure from our regulations, requiring diagram and notice to be posted on the claim for ninety days, as required by law; it being considered essential that a diagram of each parcel, together with a copy of the notice of intention to apply for a patent therefor, should be posted thereon for ninety days. The notice, to be posted for a like period in the register's office, may consist of a copy of that published in the newspaper, as aforesaid.

The foregoing it is not intended should be understood as authorizing the joint entry of parcels or claims situated at wide distances from each other in different land or mining districts, but simply to enable individuals or companies holding several placer claims in the same neighborhood, though not contiguous, to effect their entries, and have their rights adjudicated with as little expense as possible.

But by the fourteenth section of the act of Congress approved May 10, 1872, entitled "An Act to promote the development of the mining resources of the United States," provision is made to meet just such a condition of affairs as that supposed by the adverse claimants to exist in this case, to wit: That of lodes uniting in their course downward into the earth, the second proviso to said section declaring "that where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection." The Chollar Potosi company hold their claim upon the Comstock lode both by priority of location and by patent from the United States, so that even if the lodes claimed by the Julia company should be patented, and after further developments, be found to unite with the Comstock lode, said Chollar Potosi company, in view of the law and by reason of their prior location and patent, would be as fully invested with title to said lode below the point of union, including all the space of intersection, as if the Julia claims had not been patented; their right, however, to the veins claimed by said Julia company above the point of intersection, should they be found to unite, not being recognized by said statute.

It is perfectly clear to my mind, therefore, that the Chollar Potosi company cannot be injured in any just or legal right by granting a patent for the claims applied for by the said Julia company, and their adverse filing is accordingly rejected, as being insufficient under the law to justify a suspension of proceedings.

On the 30th day of December, 1871, the Bullion mining company, by their Superintendent, Mr. E. A. Shultz, appeared at the office of the Register and Receiver to file an adverse notice or protest against said Julia company's applications for patents on the Julia, La Cata, Sarah Ann, and South-east Extension of the Hale and Norcross; but the same was not filed, in consequence of the absence of the Register, as appears by the Receiver's indorsement upon the papers, until the eleventh of March, 1872.

The said Bullion company's claim is upon the Comstock lode, south of and adjoining the said Chollar Potosi company's ground, and was located June 23, 1859, long prior to the dates of the locations claimed by the said Julia company.

The nature of the protest of the Bullion company is the same as that of the said Chollar Potosi company, hereinbefore set forth, with this exception, that the Bullion claim has not yet been patented, and their adverse filing is rejected for similar reasons.

You will notify the parties in interest accordingly, allowing sixty (60) days from such notice, in which an appeal may be taken to the Hon. Secretary of the Interior.

In the event of a final survey being made of the said Julia company's claims, it will be incumbent upon the surveyor-general to definitely ascertain and report whether or not the said claims lie within the two thousand (2,000) feet limits of the proposed or located line of the Sutro Tunnel; the act of Congress approved July 25, 1866 (14 Stat. 242), granting the right of way for the construction of said tunnel, withholding from sale by the United States all lodes other than the Comstock situate within two thousand feet on each side of the line of said tunnel, which were, at the date of said act, in the *bona fide*

possession of other persons; and allowing Mr. Sutro, his heirs or assigns, the right to purchase such other veins or lodes from the United States, should the claimants thereof abandon, fail to work, possess, or hold the same according to the mining rules and regulations.

Secretary C. Delano to Commissioner Drummond, February 24, 1873.

I have considered your decision, rendered May 27, 1872, in the matter of the application of the Julia Gold and Silver Mining Company for patents for the Julia, Scheel, La Cata, South-east Extension of the Hale and Norcross, and the Sarah Ann lodes, in Nevada.

The facts are as follows:

On the thirtieth September, 1871, applications for patents for these claims were filed in the Register's Office, at Carson City, Nevada, and notice was given in the usual manner, for ninety days. On the twentieth of December, 1871, and before said ninety days had expired, Mr. Isaac L. Requa, in behalf of the Chollar Potosi mining company, filed, in behalf of said company, a protest against issuing patents for said claims, on the ground that, on the fourth of February, 1870, a patent had been issued to said Chollar Potosi mining company for their claim on the Comstock lode; that they are still the owners of the property described in said patent; that said lodes, for which the Julia gold and silver mining company has made application for patents, are the same which underlie the ground embraced in the patent issued to this Chollar Potosi mining company; and that underlying the land claimed by the Julia company, there exists no other vein, lode or lodes, than such as are embraced in the patent to the Chollar Potosi company. Wherefore, the Chollar Potosi company pray that all proceedings may be stayed until the rights of the respective parties shall have been adjudicated in the proper local courts.

There is no claim on the part of the Chollar Potosi company, that their surface rights conflict with the surface claims of the Julia company. The patent to the Chollar Potosi company is for fourteen hundred (1,400) linear feet of the Comstock lode, the premises granted being bounded on the east and the west by the walls of the Comstock lode, not yet definitely ascertained, containing $34\frac{74}{100}$ acres, more or less.

It appears that the Julia lode was located May 25, 1863; the Scheel lode, February 28, 1866; the La Cata lode, March 9, 1866; the South-east Extension of the Hale and Norcross lode, October 22, 1866; and the Sarah Ann lode, March 18, 1868, in accordance with the local rules and customs of miners; and the record title to the whole of the property thus located, is now in the Julia company.

It also appears that no legal proceedings have been instituted against the Julia company, calling in question its right to patents. It further appears, that the Julia company has in all respects complied with the mining laws, and all the rules and regulations made in accordance therewith, which are necessary to be complied with, before asking for patents for the several claims.

The question thus raised, is whether the protest entered by the Chollar Potosi company against the issuance of patents to the Julia company, and the reasons assigned by the Chollar Potosi company for such protest, constitute "an adverse claim" within the meaning and spirit of the third and sixth sections of the act approved July 26, 1866,

"granting the right of way to ditch and canal owners over the public lands, and for other purposes." (14 Stat. 251.)

In order to understand and correctly decide this question, it will be necessary to consider the various provisions of said act, and thus to arrive at its true construction and the legal intent of its authors.

The first section of the act enacts that "the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs and rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States."

The second section provides that when any person claims a vein or lode of quartz, etc., having occupied and improved the same according to the local customs where the same is situated, and having expended thereon, in actual labor and improvements, an amount not less than a thousand dollars ($1,000), and "in regard to whose possession there is no controversy or opposing claim," such claimant may file in the local land office a diagram, and enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode, with its dips, angles, and variations, to any depth, although it may enter the land adjoining, "which land adjoining shall be sold subject to this condition."

The third section makes provision for a notice of the intention of the applicant to apply for a patent, and directs the Register of the land office in regard to the manner of publishing the notice for such claim; and provides that, after the expiration of ninety days from such publication, if no "adverse claim" shall have been filed, the Surveyor-General shall survey the premises and make a plat thereof, indorsed with his approval; and then declares that upon the payment to the proper officer of five dollars ($5) per acre, together with the cost of such survey, plat, and notice, and the giving satisfactory evidence that the diagram and notice have been posted on the claim during the period of ninety days, the Register of the land office shall transmit to the General Land Office such plat, survey, and description, and a patent shall issue for the same.

The sixth section provides that whenever "an adverse claimant" to any mine located as aforesaid shall appear before the approval of the survey, as provided in the third section, proceedings shall be stayed until final settlement and adjudication in the courts, of the "rights of possession to such claim," when a patent may issue, as in other cases.

It will be observed that the second section, after pointing out what is to be done by any person or association claiming a vein or lode of quartz, before a patent is issued to such person therefor, describes it as one "in regard to whose possession there is no controversy or opposing claim." It also provides that when the patent is issued granting such mine, the right to follow the vein or lode, with its "dips, angles, and variations to any depth, although it may enter the land adjoining," is distinctly recognized. Then it is enacted that the "land adjoining shall be sold subject to this condition." The sixth section then provides that when an "adverse claimant" to any mine shall appear, all

proceedings shall be stayed until the courts shall determine "the right of possession to such claim."

In this case, the Chollar Potosi company assert no right of possession to the premises for which the Julia company ask patents. In regard to the surface possession of the property sought to be patented by the Julia company, there is no "controversy" nor "opposing claim." It is asserted, however, that the Comstock lode, previously patented to the Chollar Potosi company, underlies the surface of the several claims for which the Julia company ask patents; and it is also asserted that there is no lode or vein of quartz or other rock in place, bearing gold, silver, cinnabar, or copper, beneath the surface of the several claims of the Julia company, except it be the Comstock lode, embraced in their patent before referred to. Is this such an "adverse claim" to the "possession" or "right of possession" of the Julia company as is referred to in the third and sixth sections of the act? Does this raise a "controversy" or "opposing claim" in regard to the "possession" of the property for which the Julia company is seeking patents? If so, how is the adjoining land to be sold subject to the rights of the Chollar Potosi company? If, by merely asserting that the lode patented to this company is the only lode underlying the land claimed by the Julia company, they can prevent the issuance of a patent to the Julia company until the question is settled as to whether their assertion is correct or erroneous, how can such "adjoining land" ever be sold "subject to the rights" of the Chollar Potosi company?

The chief purpose of this mining law is to open all the mineral lands of the country to "exploration and occupation," and thus to encourage and stimulate mining operations. Hence the fourth section of the act limits the quantity of surface which any individual may take, to two hundred feet in length, and provides that no person shall make more than one location on the same lode, and that not more than three thousand feet shall be taken in any one claim by any association.

It seems to have been foreseen by the authors of this law that, without some unmistakable expression authorizing "land adjoining" to be sold, difficulties such as this case presents might arise; and to prevent this, and keep open and free to "exploration and occupation" all the mineral lands of the nation, it was enacted that land should be disposed of in very limited quantities, and that lands "adjoining" those first located should remain open to exploration and sale, subject to such rights as might have vested in the first locator. Considering this act in all its parts, keeping each of its provisions in view and observing the relations of one to the other, it seems clear to my mind that in establishing this system for the sale of the mineral lands, it was intended to allow the first patentee to follow his vein, though it may lead him under "adjoining lands." It seems equally clear, that it was also intended that such "adjoining land" should be sold subject only to this right; and it seems equally clear that their right to follow a vein under adjoining land does not create a "controversy" or "opposing claim" under the second section, nor an adverse claim under the third section, to the possession of him who enters the adjoining land for mining purposes.

There is, in this case, no controversy about the "possession" of the surface of the several claims for lodes made by the Julia company, and

hence I conclude that the Chollar company has made no such "adverse claim" to the property sought to be patented by the Julia company, as is necessary, by the act aforesaid, in order to require proceedings to be stayed until "final settlement in the courts of the rights of possession to such claim" be had. To allow any other construction would enable the first patentee greatly to obstruct the sale of the mineral lands; for, if a previous patentee sees fit to claim that his vein or lode underlies adjoining land, he can prevent this land from being patented to an indefinite extent of surface, until the fact is ascertained by legal proceedings whether such claim is true or false. He may thus suspend the sale of "adjoining land," and, indeed, prevent any sale "subject to his rights," because he will require these rights to be determined before the adjoining land is patented.

By issuing a patent to the Julia company, the legal rights of the Chollar Potosi company cannot be impaired, because the patent itself, following the direction of the statute, will provide that the adjoining lands are sold subject to the rights of the Chollar Potosi company. That company, if satisfied that its vein or lode is the only one underlying the surface claimed by the Julia company, can enjoin, in a court of equity, the Julia company from proceeding to take minerals previously patented to the Chollar company, and, upon making good their allegations, will at once obtain a perpetual prohibition of the Julia company from proceeding to take such minerals.

This construction of the act will enable the Government to proceed to sell "adjoining land," "subject to the rights" of previous patentees, and will prevent the first patentee from prohibiting the Government the exercise of this privilege, when adjoining lands are found which are supposed to contain other lodes or veins of minerals than such as have been previously patented. I cannot eradicate from my mind the necessity of this construction. Any other view of it seems to me unreasonable, and against the spirit of the entire act, with a strong tendency, at least, toward an adherence to the letter, rather than to follow the reason, of the law. I therefore affirm your decision, and direct that patents be issued to the Julia company for its several claims, which, on their face, shall show that they are issued subject to the legal rights of all previous locators or patentees.

I am the better satisfied with this conclusion, because I understand that it conforms to the uniform practice and rulings of your office, since the passage of what is termed the Mining Act.

KEYSTONE CONSOLIDATED, ET AL., *vs.* STATE OF CALIFORNIA.

Distinction between an ordinary law and a legislative compact.

Public surveys in California and Michigan contrasted.

Land clearly agricultural in character may be designated and set apart by the Secretary of the Interior on the survey of the reserved mineral lands.

There can be no school section in a township until the lines of survey are run.

Proceedings in the application of the townsite of Amador.

Mining claims are excepted from a townsite patent. Excepting clause will be inserted in mining patents within townsite limits.

The school grant to California is not a grant *in presenti*, but is in the nature of a float.

The seventh section, Act of March 3, 1853, excepts from the grant to the State of California, lands upon sections 16 and 36, upon which settlement has been made prior to survey.

Mineral lands were not granted to California by said act of 1853.

Commissioner Drummond to Register and Receiver, Sacramento, California, June 18, 1872.

The papers, testimony, arguments, and your joint opinion in the matter of a controversy between certain mining claimants, the town of Amador, and Henry Casey, grantee of State of California, affecting the right to the east half of section 36, in township 7 north, range 10 east, Mount Diablo meridian, have been examined. The question involved is mainly one of law, viz: As to the right of the State of California, under the grant of third March, 1853, to lands found upon survey to be numerically designated under our public land system as sections 16 and 36, where such lands were, at the date of such survey and designation, in the *bona fide* possession of parties properly qualified, who claim the right of having the mining and town-site laws of the United States executed in their favor.

It has never been clear to this office, that the grant by the act of third March, 1853, of sections 16 and 36, to the State of California for school purposes, vested any right in said State to mines, or that the decision of the Supreme Court, case of Cooper *vs.* Roberts, affirming the right of the State of Michigan to certain copper-bearing lands in school section 16, in that State, was applicable to California, for the reasons—

First. That the said act of March 3, 1853, "to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes," is simply a law in the ordinary meaning of the term, and as such repealable at the will of the law-making power; whereas the act approved June 23, 1836, entitled "An act supplementary to the act entitled 'An act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union on certain conditions,'" belongs to that class of laws which are legislative compacts, and which, in that case, became obligatory and binding upon the parties to it, viz.: The United States and the State of Michigan, on the twenty-fifth of July, 1836, that being the day upon which the State of Michigan passed the act of acceptance; and—

Second. That the said act of March 3, 1853, the sixth section of which grants sections 16 and 36 to the State of California for schools, contains a special condition in the last proviso to its second section, "That none other than township lines shall be surveyed where the lands are mineral," a provision of law not applied by Congress to surveys in the State of Michigan, for the probable reason that no mines were known to exist in that State when the authority of Congress was first given for extending the survey therein.

The inhibition as to survey of other than township lines, where the lands were considered mineral, was not repealed by Congress until the passage of the laws of July 26, 1866, and July 9, 1870, commonly known as the "mining acts," the first of which in its tenth and eleventh sections, and the latter in its sixteenth section, provides for extending the United States surveys to the lands previously designated as mineral, and which had been excluded from survey or sold as such, the eleventh section of said statute of July 26, 1866, providing "that upon the survey of the lands aforesaid, the Secretary of the Interior may designate and set apart such portions of the said lands as are

clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands of the United States, and subject to all the laws and regulations applicable to the same."

It is not readily understood by what process of reasoning the sixth section of said act of March 3, 1853, can be construed to mean a present grant of sections 16 and 36 of lands, which were by the second section of the same act expressly excluded from survey as mineral.

The land, comprising what is now designated township 7 north, range 10 east, Mount Diablo meridian, forms a part of Amador County, California, in the mining region, and was of course reserved from survey or disposal until after the passage of the said mining act of July 26, 1866, it not having been surveyed into sections and platted until the year 1870.

The deputy surveyor returned the east half of section thirty-sixth in said township as vacant agricultural land, as appears from the official plat thereof; a return shown by the evidence to be grossly incorrect and fraudulent, the testimony clearly establishing that the town of Amador, which lies within said subdivision, was plainly visible from numerous points along the lines run by the surveyor, as were also the improvements, etc., of the several quartz mining companies, whose mines are within said east half of section thirty-six.

The seventh section of said statute of March 3, 1853, provides for pre-emption claims upon school sections sixteen or thirty-six, but fails to provide for mining claims for the very excellent reasons: First, that Congress in said act had only given authority for the survey of agricultural lands upon the sixteenth and thirty-sixth sections, on which it was well known that agricultural pre-emption claims would often be found, rendering it necessary to provide the means for their protection, and for indemnifying the State, by granting lieu lands for the areas so pre-empted; and second, that Congress having by said act expressly limited the extension of surveys to agricultural lands, that body considered that inhibition in itself ample and complete protection to miners against school or any other kind of claims; there being no section 16 or 36 so long as this region remained a part of the reserved mineral land of the United States.

The mining act of July 26, 1866, provides, among other things, for granting patents for mining claims upon surveyed and unsurveyed lands, and a number of mines upon unsurveyed public land have been patented in accordance with said statute. If said act of March 3, 1853, is to be interpreted as being a present grant of all the unsurveyed lands in California, which, upon survey into sections, are found to be designated sections sixteen and thirty-six, it follows, of course, that in case any of the mines so patented are found, when such surveys are made, to be within the sections so designated, the title so issued will become void and the right of the State attach, the same as if no such patents had ever been issued.

Such construction of the law would not only be preposterous and absurd, but would be disastrous, in a great measure, to the mining interests, inasmuch as no miners upon unsurveyed lands can tell whether they are upon school lands or not, or whether they could with safety go to any expense in opening up any mine, in view of the possible contingency of its being upon what may hereafter be found to be a school

section, in which event their time, labor, and expenditures would, instead of being of any advantage to themselves, only enhance the value of the property of the State or of its assignees. The first section of the mining statute of July 26, 1866, enacts "that the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States and those who have declared their intention to become citizens," etc.

Holding, therefore, as this office does, that prior to the 7th October, 1870, the date of filing the plat of said township, the said east half of section 36 formed a part of the unsurveyed mineral lands of the public domain, within the scope and meaning of said first section, it is ruled that the parties who were in the actual occupancy and possession of mining claims under local regulations in said subdivision, at the date of the filing of said township plat, were in such occupancy and possession under authority of said statute of July 26, 1866, and that they or their grantees, upon compliance with the mining laws of Congress, will be entitled to patents for their respective claims, the same as if they were upon unsurveyed lands or within sections other than 16 or 36.

With regard to the town of Amador, it appears from the record that it was settled previous to the year 1853; that on the 28th of November, 1870, J. Foot Turner, county judge, filed in your office D. S. No. 2171, in trust for the inhabitants of said town, claiming the right to enter the northeast quarter, east half of northwest quarter, northwest quarter of southeast quarter, and northeast quarter of southwest quarter of said section 36, in virtue of the town-site law of March 2, 1867; that he subsequently filed abandonments of said town-site claim so far as it affected the north half of northeast quarter of said section, and the veins, lodes, or ledges and surface ground claimed by the several mining companies in the east half of said section.

The town-site law of 2d of March, 1867, expressly provides that no title shall be acquired under its provisions to any mine of gold, silver, cinnabar, or copper, and the act amendatory thereof, approved June 8, 1868, provides that no title under said act of 2d of March, 1867, shall be acquired to any valid mining claim or possession held under existing laws of Congress.

Several mining claims are shown to exist within the limits of the land claimed for said town-site; therefore this office will not finally pass upon said town-site application until all mining claims within its limits shall have been adjusted according to law, it being decided that after all the mining claims therein shall have been segregated and finally adjusted, the remainder of the land included by said town-site application may be entered in the usual manner for the inhabitants of the town, as provided by law.

As a portion of the town of Amador appears to lie upon some of these quartz claims, it will be necessary in issuing the patents for the mines to insert a special clause excepting and excluding from such conveyance any and all town property or municipal rights upon the surface ground so patented, such as houses, buildings, structures, lots, blocks, streets, alleys, or other improvements not belonging to the grantee named in the patent, and all rights necessary or proper to the occupation, possession, or enjoyment of the same.

Secretary Delano to Commissioner Drummond, April 28, 1873.

I have examined the case of the Keystone Consolidated Mining Company, Original Amador Mining Company, Bunker Hill Quartz Mining Company, Eureka Quartz Mining Company, and town site of Amador City *vs.* The State of California, on appeal to the Department from the decision of the Commissioner of the General Land Office of June 18, 1872.

The land in question is the east half of section 36, township 7 north, range 10 east, Mount Diablo meridian, in the State of California. The State claims the entire tract under the act of Congress of March 3, 1853 (10 Stat., 244, sec. 6), as school land. The mining companies claim a portion of it under the act of July 26, 1866 (14 Stat., 251), and Amador City claims a part of it under the act of March 2, 1867 (14 Stat., 541). The land is mineral land, and said mining companies located their mines for most of the territory now claimed by them in 1851, and for the remainder in 1856, 1863, and 1864. They have continuously worked these mines from time of location to the present, and have expended on the same a large sum, exceeding $1,000,000, and have realized from them a still larger sum. They have complied with all the provisions of the act of July 26, 1866, and have made their respective applications in due time.

Amador City was located on the half section in controversy, in the immediate vicinity of said mines, in 1851, and then had a population of about seventy-five persons. It contained about three hundred inhabitants at the date of the act of March 3, 1853, and now contains about five hundred. It has about one hundred dwelling-houses, two stores, two saloons, one hotel, one post office, one express office, one telegraph office, one church, and one school-house. It has filed an abandonment of all claim to any portion of the legal subdivisions upon which it is situated, so far as the same conflicts with the claim of either of the mining companies.

The survey of the township lines of said township 7 was completed August 27, 1869. The section lines were run March 10, 1870. The plat was approved September 30, 1870, and filed in the local office October 7, 1870. The State of California, on the fourth of November, 1870, sold to Henry Casey the east half of said section 36 for the sum of $400, and the claim to the same is now prosecuted by him or those who claim under him.

Upon these facts, it is conceded by all parties to this contest, that each of the said mining companies is entitled to a patent for the lands claimed by it, unless the title for said half section is now vested in the State of California or its grantee. It is also conceded that the claim of Amador City is good and valid, unless in conflict with the title of the State or its grantee.

The local officers rejected the title of the State, and their decision was affirmed by the Commissioner.

The claimant under the State has appealed, and the whole case is now before this Department on its merits. It involves a construction of the act of March 3, 1853, entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes."

In attempting to ascertain the true meaning of this act, I shall as-

sume, as hornbook law, that in every valid grant there must be a grantor capable of making the grant, a grantee capable of taking it, and a thing granted capable of identification with reasonable certainty; that all grants made by the General Government to individuals, corporations, or States, are to be construed strictly against the grantee, and that nothing passes by implication; that the intent of the lawmakers is to govern, and that such intent is to be gathered from the entire act.

In the further examination of this case, I propose to consider the following inquiries:

First. When does title vest in the State, to sections 16 and 36, under said act?

Second. Does the seventh section except from the grant, land upon which settlement has been made prior to survey for other purposes than pre-emption appropriation?

Third. Does the grant include mineral lands in sections 16 and 36?

First. When does title vest in the State to sections 16 and 36, under said act? Section 6 of the act reads as follows: "That all the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections 16 and 36, which shall be, and hereby are, granted to the State for the purposes of public schools in each township, and with the exception of land appropriated under the authority of this act or reserved by competent authority, and excepting also the lands claimed under any foreign grant or title, and the mineral lands, shall be subject to the pre-emption laws of fourth September, eighteen hundred and forty-one," etc.

It is claimed by appellant that this section contains a grant *in presenti* to the State, taking effect from the date of the act, upon all tracts afterward located by Government survey on sections 16 and 36 in each township, and that complete title was vested in the State to the same on the 3d of March, 1853, and that Congress thereafter had no power to provide a way for a different disposition of any such lands. On the other hand it is claimed, on behalf of the mining and town site companies, that the grant, though in words *de presenti*, was in fact a grant in the nature of a float, taking effect to vest title upon no specific tracts until survey, and that, until such survey, Congress had power to make other and different disposition of the land.

The power of Congress to change, modify, alter, or repeal the grant in question at any time prior to the date when title vests in the State, will not, I think, be questioned, and it is equally clear that after title has once vested, Congress has no further power to alter, modify, or change the grant. It is evident, therefore, that, with reference to this branch of the case, it is only necessary to inquire whether title to sections 16 and 36 vested in the State prior to the act of July 26, 1866. If it did, then Congress had no power to dispose of the land in the manner pointed out in that act; if it did not, then the title of the mineral claimants is good, and patents must issue to them for the tracts claimed.

In my opinion, the sixth section of the act of 1853 should be construed as a grant to the State *in presenti*, in the nature of a float, taking effect upon specific tracts when the same are surveyed by the United

States, and not before. The grant is in words *de presenti*, but until survey there are no tracts or parcels of land in existence answering to the calls of the grant. A beneficial interest under it can only ensue to the State when the United States, in extending the lines of the public surveys, sets apart certain tracts and designates them as sections 16 and 36. It will not be denied that Congress had the legal power, no matter what may be said of the political obligation of the Government, to provide that this land should never be surveyed, or that in surveying it a different method should bé adopted than that now in use, and no such tracts as sections 16 and 36 be set apart. Would not the passage of such an act have operated to entirely defeat the grant to the State? The grant calls for certain tracts by recognized technical designations. No such tracts could be found, and the State would be without remedy to compel the Government to create them. A like effect would be produced by a refusal of the executive officers of the Government to extend the surveys. The State would be indefinitely without beneficial interest in the grant. Of course the happening of the contingency I have mentioned could hardly for a moment be apprehended, for the United States is, in good faith to the State, and in the performance of its political obligations, bound within reasonable time, in the extension of the public surveys, to set apart the tracts granted; but I refer to it to show the nature of the grant to the State and its liability to defeat before survey.

I think the grant is in nature the same as that usually made by Congress to railroad companies to aid in the construction of their roads. These grants are generally for a certain number of sections, designated by odd numbers on each side of the road, with a provision for indemnity selection, in case any of such sections shall have been sold or otherwise disposed of prior to the definite location of the line. The highest judicial authority (Railroad *vs.* Smith, 9 Wallace, 99; Railroad *vs.* Fremont Co., 9 Wallace, 90), has repeatedly held that these grants did not vest any right in the companies to specific sections until the line of the road was definitely fixed on the face of the earth. The grant to California by the act of 1853 is similar. It is for certain sections designated by numbers, the precise location of which cannot be definitely ascertained until survey. The grant in both becomes certain upon the happening of a contingency; in the former by definite location, in the latter by survey. In the railroad cases, the Supreme Court holds that title to specific tracts vests only on the happening of this contingency that makes the grant certain as to location. Why should not the same rule be applied to the grant to the State, and the title held to be vested upon the happening of the contingency that makes that grant certain as to location?

In the case of Gaines *et al. vs.* Nicholson (9 How., 365), passing upon the right of the State of Mississippi to school sections under an act (2 Stat., 229), reserving section sixteen in each township for the support of schools, and two subsequent acts providing for indemnity to the State for loss of same by reason of interference with foreign grants and for leasing such lands for the support of schools, the Supreme Court said: "The State of Mississippi acquired a right to every sixteenth section by virtue of these acts on the extinguishment of the Indian right of occupancy, the title to which in respect to the partic-

ular sections became vested, if vested at all, as soon as the surveys were made and the sections designated."

The case of Cooper *vs.* Roberts (18 How., 173), although cited and relied upon by counsel for the State, seems not to sustain their position, but rather follows and affirms the principles enunciated in Gaines *vs.* Nicholson.

The United States, in her compact with the Territory of Michigan, on her admission to the Union as a State, ratified July 22, 1836, appropriated to the State section 16 in each township for the benefit of schools. The land in controversy was surveyed in the summer of 1847, and designated as section 16. The right of the State to the same was contested by certain mining claimants asserting rights under a purchase from the Government of lead mines, under the act of March 1, 1847, to whom a patent had issued, reserving the right of the State. The court first examined the history of the usual grants to the States, upon their admission to the Union, for the benefit of schools, showing that these gifts were the result of a cherished policy on the part of the Government for the encouragement of popular education, and declaring that the compact with the States did not except mineral lands from the operation of the grant. The court then said: "We agree that, until the survey of the township and the designation of the specific sections, the right of the State rests in compact, binding, it is true, the public faith, and dependent for execution upon the political authorities. Courts of justice have no authority to mark out and define the land which shall be subject to the grant. But when the political authorities have performed this duty, the compact has an object upon which it can attach, and, if there is no legal impediment, the title of the State becomes a legal title." The court then passed to the consideration of the question whether any such "legal impediment" was created by the act of 1847, and decided that there was not, for the reason that said act expressly excepted section 16 from its operation. The court then further inquired whether the execution of a lease to the mineral claimants by the Secretary of War, with the right of renewal upon the lessee's compliance with certain conditions, upon which lease the claimants, having continued in possession and complied with conditions, were allowed to make entry under the act of 1847, was a legal impediment preventing the title from vesting in the State, and held that it was not such an impediment, for the reason that the claim of the company was not perfect under the lease, the act of 1847, and the act of September, 1850 (9 Stat., 472). The court said: "Hence had there been a legal impediment to the execution of the compact with Michigan, enacted either by the second section of the act of 1847, which separated, for some purposes, the mineral from the public lands, or by the privileges granted to the lessees or their assigns, in the third section of that act, it was removed by the repealing clause of the act of 1850, and the non-compliance with the conditions on which the privileges depended."

It is thus seen that even in the case of a compact between the United States and the State of Michigan, duly ratified by the State (a much stronger case than that of the simple grant, by an ordinary act, to the State of Calfornia), the Supreme Court recognized the power of Congress, by subsequent legislation, to interpose a legal impediment to the

title to school sections vesting in the State upon survey. There was no intimation that this power of Congress was doubted by the court. It was plainly recognized in every inquiry, and the title of the State was affirmed on the sole ground that no such impediment existed.

In the case of Kissell *vs.* Saint Louis public schools (18 How., 19), in discussing the right of the school commissioners of Saint Louis to certain out-lots, town lots, etc., reserved for the use of schools by the act of June 13, 1812 (2 Stat., 148), and the confirmatory act of January 27, 1831 (4 Stat., 435), which said lots were to be surveyed under the provisions of the first mentioned act, the court said: "Our opinion is that the school lands were in the condition of Spanish claims after confirmation by the United States, without having established and constructed boundaries made by public authority, and which claims depended for their specific identity on surveys to be executed by the Government. The case of West *vs.* Cochran (17 How., 413), lays down the dividing line between the executive and judicial powers in such cases, to wit: that until a designation, accompanied by a survey or description, was made by the Surveyor-General, the title attached to no land, nor had a court of justice jurisdiction to ascertain its boundaries."

In the case of Van Valkenberg *vs.* McCloud (21 Cal. S. R., 330) the Supreme Court of California, in construing the five hundred thousand acre grant to the State, under the act of Congress of September 4, 1841 (5 Stat., 453), held that selections could be made thereunder prior to the survey of the land, subject to subsequent change to conform to the government lines; but this decision was overruled in the subsequent cases of Terry *vs.* Megerle (24 Cal., 624), Grayson *vs.* Knight (27 Cal., 507), and Middleton *vs.* Lowe (30 Cal., 596). In the latter case, referring to the decision of Grayson *vs.* Knight, the question being one relating to the right of the State to sections 16 and 36, under the act of 1853, the Court said: "The reasons operating to prevent the State or her vendee from acquiring a title by the aid of selection made, as in that case before the congressional survey, are equally cogent to show that title to any particular parcel of the lands granted for the purposes of public schools, does not vest in the State until such survey has been made. * * * It thus appears that the grant to the State has not attached to the land in controversy (section 36), both because of the exception to the act of Congress in favor of private grants, and because the lands have not been surveyed by the United States."

The cause of Higgins *vs.* Houghton, relied upon by counsel to sustain the claim of the State, seems rather, upon a careful examination, to sustain an opposite view of the law from that contended for. The case involved a question as to the right of the State under the act of 1853 to sections 16 and 36, and the Court said: "We consider that in the grant to California of March 3, 1853, the power of locating the quantity granted, 1,280 acres, in effect in two parcels in every township, was reserved by the government, and as fast as townships thereafter were surveyed and sectionized, that the State became the owner of the sixteenth and thirty-sixth sections absolutely, not only as to quantity, but as to position also. Township No. 13 was surveyed and properly subdivided subsequent to the grant and prior to May 20, 1861; and since the date of that occurrence, the State, by the effect of the grant, and by the law of the event, has been and is now the absolute

and several owner of the sixteenth and thirty-sixth sections of that township as against the government. If there is any legislation by Congress prior to the grant which would interfere with the conclusion, as the objection in effect supposes, it has not been brought to our notice; and if there has been any legislation since the grant that conflicts with the conclusion, it must be null and void, unless, indeed, it has been acceded to by the grantees." The court here distinctly holds that, when township No. 13 was surveyed and properly subdivided, the State, by the effect of the grant and the law of the event, acquired an absolute and several ownership to the sixteenth and thirty-sixth sections. This is what I hold to be the true interpretation of the act, and I have no doubt that, after such survey, the title of the State in agricultural lands was vested and beyond the reach of Congress. I do not understand the reference by the court to possible legislation of Congress to mean anything more, than that any subsequent legislation attempting to interfere with this vested right would be null and void.

I find strong support for the view I have expressed in other portions of the act of March 3, 1853, and in contemporaneous legislation. The seventh section provided that where the sixteenth and thirty-sixth sections should be reserved for public uses before the same should be surveyed, other land should be selected by the proper authorities of the State in lieu thereof. At the passage of the act no reservations of lands for public uses in California, or comparatively none, had been made. The public lands were unsurveyed, and reservations would be needed for light-houses, forts, arsenals, fortifications, and Indian reservations. There were then over 60,000 Indians in the State, and provision would necessarily be required for them. In fact, Congress did provide for five Indian reservations in California, of 25,000 acres each, on the very day this act was passed (10 Stats., 238). Is it for a moment to be supposed that Congress would, by the sixth section, give to the State an absolute vested right in all lands that should fall upon sections 16 and 36, and in the very next section provide that it should have no right whatever in any of said sections which might thereafter be reserved, before survey, for public uses, but should be compelled to take other lands in lieu thereof? I cannot believe that it so intended.

In opposition to the reasons and authorities above set forth, counsel for the State have cited several cases, which they claim sustain a different construction of the act, and which I will now consider. The first of these is Rutherford *vs.* Greene (2 Wheat., 196). In 1782, the State of North Carolina passed an act, by which the State reserved a tract of land for the relief of officers and soldiers in the continental line, and appointed a board of commissioners to set off the lands allotted to each. The tenth section provided "that 25,000 acres of land shall be allotted for, and given to, Major-General Nathaniel Greene." The commissioners allotted 25,000 acres to General Greene, and caused the tract to be surveyed, which was done on the eleventh of March, 1783. It was claimed that the words "shall be allotted" did not import a grant, and that the legislature, after the allotment and survey, had made a different disposition of the land in controversy; but the court held that the title of Greene was valid. Chief Justice Marshall, in delivering the opinion of the court, said: "As the act was to be performed in future, the words directing it are necessarily in the future tense. 'Twenty-five

thousand acres of land shall be allotted for and given to Major-General Nathaniel Greene.' Given when? The answer is unavoidable. When they shall be allotted. Given how? Not by any future act, for it is not the practice of legislation to enact that a law shall be passed by some future legislature, but given by force of this act." "Nothing can be more apparent than the intention of the legislature to order these commissioners to make the allotment, and to give the land, when allotted, to General Greene." * * * "The general gift of 25,000 acres lying in the territory reserved for the officers and soldiers of the line of North Carolina, had now become a particular gift of the 25,000 acres contained in the survey." * * * "It is clearly and unanimously the opinion of this court, that the act of 1782 vested a title in General Greene to 25,000 acres of land, to be laid off within the bounds allotted to the officers and soldiers, and that the survey, made in pursuance of that act and returned in March, 1783, gave precision to that title and attached it to the land surveyed; that his rights are not impaired by the act of 1783 and the entry of appellant, all of which are subsequent to his survey."

It would be difficult for the learned counsel to find a case more in conflict with the doctrine which it is cited to support.

In Lessieur *vs.* Price, (12 How., 59,) the Supreme Court construed the act of Congress of March 6, 1820, (5 Stats., 545,) which enacted "that four entire sections of land be, and the same are hereby granted to the said State (Missouri) for the purpose of fixing the seat of government thereon; which said sections shall, under the direction of the legislature of said State, be located as near as may be in one body, at any time, in such townships and ranges as the legislature aforesaid may select, on any of the public lands of the United States."

Four sections were selected which were claimed under a New Madrid location, and it became material for the court to fix the time at which title vested in the State to the lands selected. The court said: "The land was granted by the act of 1820; it was a present grant, wanting identity to make it perfect; and the legislature was vested with full power to select and locate the land; and we need only here say, what was substantially said by this court in Rutherford *vs.* Greene's Heirs, (2 Wheat., 196,) that the act of 1820 vested a title in the State of Missouri of four sections; and that the selections made by the State legislature, pursuant to the act of Congress, and the notice given of such location to the Surveyor-general, and the register of the local district where the land lay, gave precision to the title and attached to it the land selected." And again: "The next inquiry is as to the date when the land selected attached to the grant. June 28, 1821, the governor of Missouri notified the Surveyor-general of the fact that the land had been located by the commissioners, and awaited the action of the legislature; and on the 31st day of December, 1821, the land was accepted by the legislature. The same act provides for laying off a town and the establishment of the seat of government thereon. And as the commissioners had power to locate, and did so, subject only to legislative sanction of their report, and that report was sanctioned, our opinion is that the acts were concurrent, and that the title refers to the first act, and therefore that the State took title from the 28th of June, 1821, when the Surveyor-general was notified that the location had been made."

Thus it appears that although the court held that the grant was a present one, it also held that title to the particular sections did not vest on the 6th of March, 1820, the date of the act, but did vest on the 28th of June, 1821, the date when the Surveyor-general was notified of the selection.

By parity of reason it should be held in the case now under consideration that although the grant to the State by the act of 1853 was a present grant, yet it did not vest title to sections 16 and 36 until a survey had been made which "gave precision to the title, and attached to it the land surveyed."

In How *vs.* The State of Missouri, (18 Howard, 126,) the court held that the grant to the State of section 16 in contest, by act of March 6, 1820, (2 Stats. 547,) adopted by ordinance declaring the assent of the State thereto, July 19, 1820, was not affected by the subsequent confirmation by Congress of a Spanish claim theretofore rejected by the board. It appears, however, that the particular section in contest in that case was surveyed prior to the passage of the act confirming the Spanish claim, and that three of the justices dissented from the opinion of the court, if intended to go further than to hold that, although the tenth section of the act of March 3, 1811, prevented title from vesting in the State until final decision by Congress on the claim of Vallé, (Spanish claimant,) yet the act of May 24, 1828, confirming lands to Vallé, operated as such final decision, and excepted from confirmation so much land as was included in section 16 then surveyed.

In the case of Veeder *vs.* Guffey (3 Wis., 520) it was held that the act of Congress approved August 8, 1846, took effect upon the admission of the Territory of Wisconsin to the Union as a State; that it vested in the State the title, potentially, to a quantity of land equal to three sections in width on each side of the Fox River, and determined the location of the lands to be the alternate sections on each side of the river, requiring only the ministerial acts of survey, selection, and approval to render the specific parcels which would fall to the State or the United States definite and fixed, and that, by the grant, the State, upon admission to the Union, became seized of one-half of the lands on each side of the Fox River; and, the mode of partition being established by the grant, it was competent for the State to provide modes and terms of sale. It will be noticed that in the act of 1846 are descriptive words very dissimilar from those used in the act of 1853, being as follows: "A quantity of land equal to one-half of three sections in width on each side of said Fox River;" and also that by the second section of the act it is distinctly provided "that, as soon as the Territory of Wisconsin shall be admitted as a State into the Union, all the lands granted by this act shall be and become the property of the State." This express provision of the second section, and the peculiar character of the descriptive words, seem to have governed the court in its decision as to the time when the title vested in the State.

Secretary Stuart, September 10, 1851, (1 Lester, 495), in passing upon the grant to Michigan of school sections, already referred to, in citing the case of Cooper *vs.* Roberts (18 How., 173), said: "I regard it as an absolute grant of every sixteenth section which had not on the twenty-third of June, 1836, been sold or otherwise disposed of, whether then designated by survey or not." This decision was followed by

Acting Secretary Otto, July 10, 1867, in a case involving the construction of the act of 1853, under which the State of California claims. In this case the Acting Secretary said: "The sixth section of the act entitled 'An act to provide for the survey of the public lands in California,' etc., approved March 3, 1853, granted to the State of California, of the public lands, whether surveyed or unsurveyed, sections 16 and 36, for the purposes of public schools in each township."

From this quotation it would appear that the Acting Secretary construed the sixth section as though it read "with the exception of sections 16 and 36, which, whether surveyed or unsurveyed, shall be, and hereby are, granted to the State for the purposes of public schools," etc. I think it should be construed as though it read as follows:

"*And be it further enacted,* That all the public lands in the State of California, whether surveyed or unsurveyed, shall be subject to the pre-emption laws of fourth of September, eighteen hundred and forty-one, with all the exceptions, conditions and limitations therein, except as herein otherwise provided, and with the exception of sections sixteen and thirty-six, which shall be, and hereby are, granted to the State for the purposes of public schools in each township, and with the exception of lands appropriated under the authority of this act or reserved by competent authority, and excepting also the lands claimed under any foreign grant or title, and the mineral lands."

I have been shown a newspaper report of a late decision of the Supreme Court of California, in the case of Sherman *vs.* Buick, in which that court held that the act of March 3, 1853, vested an absolute title in the State to sections sixteen and thirty-six from the date of the passage of the act, and that Congress thereafter had no power to dispose of said sections before survey. The opinion of the court is very brief. It cites and relies upon the former rulings of the court in the cases therein mentioned, which cases, as I understand them, do not go to the full extent claimed for them.

This decision is not satisfactory to my mind, and I apprehend is not entirely satisfactory to the learned court which pronounced it, as I am informed that a rehearing has already been allowed.

I am satisfied, upon full consideration of all the cases cited, and the exhaustive arguments of the able counsel representing all parties in interest, that the weight of authority is clearly in favor of the construction I have given above.

Second. Does the seventh section except from the grant, land upon which settlement had been made prior to survey for other purposes than pre-emption appropriation?

The seventh section of the act of 1853 is in part as follows:

"*And be it further enacted,* That when any settlement by the erection of a dwelling-house, or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections before the same shall be surveyed, or when such sections may be reserved for public use or taken by private claims, other land shall be selected by the proper authorities of the State in lieu thereof."

It is claimed on behalf of the mineral claimants that this section excepts from the operation of the grant all lands in sections 16 and 36 upon which a settlement of any kind had been made, prior to survey, by the erection of a building or buildings, or the cultivation of any

portion of the land, whether such settlement was made with a view to pre-emption, or for entry as town sites, or otherwise. On the part of the State it is claimed that the exception includes only settlements made with a view to pre-emption, and that none other would protect sections 16 and 36 from the grant.

The language of the seventh section is not so clear as to be entirely free from doubt, but a careful examination of the terms used, and a consideration of the various objects evidently intended to be accomplished by Congress in its passage, will show, I think, that the exception includes more than simply settlements with a view to pre-emption.

I call attention to the language used: "that where any settlement, by the erection of a dwelling-house, or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections," etc. A person may erect a dwelling-house on, or he may cultivate a portion of a tract of land without acquiring a pre-emption claim. Both the erection of a house and cultivation are requisite on the part of a pre-emption.

If Congress had intended to limit the settlement of what is technically known as a pre-emption settlement, I think it would have used more apt words to express such intent. It would have said "that where any pre-emption settlement shall be made," etc. It has done no such thing; but, on the contrary, has adopted such a mode of expression as, to my mind, negatives the idea that a pre-emption settlement alone was intended.

To limit the exception to settlements made by pre-emption claimants, would be to protect comparatively few of the actual settlements in any of the mining districts, and to award to the State many very valuable and lasting improvements made under authority and sanction of law and the usages of the country. It is a notorious fact that few, if any, settlements in the early days of California were made in any portion of the State for the purposes of agriculture. Emigration was drawn to the State, and settlements made almost entirely with a view to developing and working the newly-discovered mines. The miners located in villages and small settlements, cultivating the land only so far as was necessary in following their occupation of mining. Under the construction of the act contended for by the State, none of the settlements or improvements so made were protected from the grant, except, perhaps, town sites upon purely agricultural lands. Is it reasonable to suppose that Congress intended to protect isolated pre-emption claimants, and at the same time to grant to the State the valuable improvements of miners, and in some instances include whole villages in the vicinity of the mines? The eighth section of the act expressly provided that the public lands (not mineral) occupied as towns or villages should not be subdivided or subject to sale or appropriation by settlement under the provisions of the act, but should be subject to the town-site act of May 23, 1844, except town-sites on or near mineral lands, the inhabitants of which should have the right of occupancy or cultivation only until such time as Congress should dispose of the same. I do not suppose it will be doubted that this section excepted from the grant of the State any such town sites found by survey upon agricultural land in sections sixteen and thirty-six; but if the construction of sections six and seven, contended for by the State, be al-

lowed, it is clear that a town located on or near mineral lands would pass to the State under the grant. Can it be for a moment supposed that Congress intended to hold out inducements to miners to settle on or near mineral lands in towns and villages, and by the very same act give their improvements away to the State, while protecting some, and these the solitary agricultural settlers?

One of the great objects of the act seems to be in providing for the disposition of the public lands, according to the various elements claiming recognition, and to protect each interest created from encroachment by the others. The seventh section was intended to protect all settlements made upon the public land before survey from the grant to the State, which, from its peculiar nature as to final position, threatened every settler whose claim or improvements were not bounded by subdivisional lines of public surveys. This intention of Congress would be defeated by the construction contended for by the State.

I am of opinion, therefore, that the seventh section of the act excepts from the grant to the State lands upon sections 16 and 36, upon which any settlement, by the erection of a building or buildings, or the cultivation of any portion of the land, has been made prior to survey.

Third. Does the grant include mineral lands in sections 16 and 36?

In my opinion, Congress, by the act of 1853, did not intend to grant, and did not grant, to the State any mineral lands that, by survey, are shown to be sections 16 and 36. The act was passed soon after the discovery of the great mineral wealth of California had been made. The attention of the country and of Congress was called to the question of the disposition of such lands. No plan had been adopted. Congress for the first time undertook to legislate in regard to the public lands in that State.

A careful examination of the act will show that Congress did not intend to dispose of any of its mineral lands, but contemplated a future disposition of them. The eighth section provides that the inhabitants of towns located on or near mineral lands, shall have the right of occupation and cultivation "only until such time as Congress shall dispose of the same." It evidently did not then suppose that it was disposing of a considerable portion of them. The act, in a great many of its provisions, very carefully reserves the mineral lands from its operation. Thus, in the sixth section, it is provided that the mineral lands shall be excepted from the lands subject to the pre-emption laws; in the seventh section it is provided that no person shall obtain the benefits of this act "by a settlement or location on mineral lands," and in the eighth section it is provided that the inhabitants of towns located on or near mineral lands, shall have the right of occupation and cultivation only until such time as Congress shall dispose of the same. And, in the twelfth section, it is provided that the State shall have the right to select two townships, or seventy-two sections, for the use of a seminary of learning: "*Provided, however,* That no mineral lands shall be subject to such selection;" and in the thirteenth section the State is given the right to select ten sections for the purpose of erecting the public buildings of the State: "*Provided, however,* That none of said selections shall be made of mineral lands." Why all this care and painstaking to exclude mineral lands from these minor provisions, if it were intended to give the State mineral lands in the major provision relating

to the sixteenth and thirty-sixth sections? I think Congress intended to reserve all the mineral lands from the operation of the act, and that there might be no doubt about this reservation as to the sixteenth and thirty-sixth sections, it expressly provided in the third section "that none other than township lines shall be surveyed when the lands are mineral." As I have before attempted to show, the grant could not take effect until survey, and this third section, which must be construed as a part of the act, and in connection with all its other provisions, expressly prohibits the only survey that could possibly locate these sections. It therefore, in connection with the other express reservations, satisfies my mind that Congress did not intend to make a grant of mineral lands to the State, and that those members of Congress who undertook to speak for the committees having the matter in charge, were correct when they stated in debate that no mineral lands were granted by the act. (See *Cong. Globe*, vol. 25, pp. 1036–1038.)

I regard the act of July 26, 1866, as providing an exclusive method for appropriating the mineral lands of the United States. It was the first act passed by Congress, and perhaps the first ever passed by any government, which undertook to dispose of its mineral lands. It provided in its first section, "That the mineral lands of the public domain," (which is equivalent to saying all the mineral lands of the public domain,) "both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation, by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States."

It required every person claiming any mine to occupy and improve the same, and to expend thereon in labor or improvements not less than $1,000, and to do and perform certain other things. It limited the location of any individual to two hundred feet along the vein, with an additional two hundred feet for discovery, and any association to not more than three thousand feet, and required payment at the rate of $5 per acre. It provided that, when the mineral lands should be surveyed, the Secretary of the Interior might designate and set apart such portions of the same as were clearly agricultural, and that the same should be subject to pre-emption and sale as other public lands. In short, it adopted a system for the disposition of the mineral lands, and such a system as would give every citizen an equal opportunity to engage in the business of developing them. It was evidently intended to be the only method by which mineral lands could be appropriated. It made no exceptions in favor of school or other grants.

If the State should obtain two sections in every mineral township, it might establish a mineral system for itself, and one in conflict with that of the General Government. In my opinion Congress never intended to make such a state of things possible.

No surveys of mineral lands were authorized or made until the passage of the act of July 9, 1870, (16 Stat., 217, sec. 16,) and long after the passage of the act of 1866.

I am constrained to hold that no mineral lands were granted by the act of 1853. If I am in error, the State can lose nothing, for she has

an easy method of presenting the question for decision of the Supreme Court, where it will doubtless finally go. If, however, my decision should be in favor of the State, and it should be erroneous, there would be very many cases in which I am unadvised of any way by which the error could be corrected.

I affirm your decision.

Commissioner Drummond to Register and Receiver, Sacramento, California, May 14, 1873.

I enclose herewith a printed copy of the decision of this office and of the Hon. Secretary of the Interior in case of the Keystone Mining Company, Eureka Quartz Mining Company, Original Amador Mining Company, Bunker Hill Quartz Mining Company and the Townsite of Amador City *vs.* the State of California. You will allow said companies to proceed with their applications for patents.

In accordance with this decision, you will decline to certify to the State any land lying in sections sixteen or thirty-six, which has been returned as mineral by the surveyor, where, by orders from this office, the land is suspended from disposal until the non-mineral character thereof is shown by proof taken after due notice, or where affidavits have been filed alleging the land to be mineral, until this office shall have decided, upon the testimony, that the tract in question is not mineral land, and that the State is entitled thereto under the grant of March 3, 1853.

HOW A CONTEST BETWEEN MINERS AND AGRICULTURISTS MAY BE RE-OPENED.

Commissioner Drummond to the Register, Sacramento, California, June 20, 1872.

Dingman's entry was allowed, after a hearing taken subsequent to what appears to be a sufficient notice by publication and posting, and by personal service upon the former mineral affiants, who failed to appear. The case cannot now be re-opened upon the affidavits presented, unless the deponents will furnish this office with satisfactory proofs that they, or any of them, have the possessory right to an actual mining claim on the land so entered by Dingman, and if they have such claim, they must show in what specific forty-acre subdivision of the land so entered their mining location exists.

By the term, actual mining claim, is meant a claim located and held in accordance with the local customs or rules of miners in the district. Unless this can be shown, or it be established that fraud was resorted to by said agricultural claimant in giving the notices required by circular instructions in such cases, it is not perceived how the affidavits now received are to affect the land entered by William Dingman, in view of the hearing already had, after due notice given by him as aforesaid.

SATISFACTORY EVIDENCE THAT A CERTAIN TRACT IS AGRICULTURAL IN CHARACTER.

Secretary Delano to Commissioner Drummond, July 10, 1872.

The evidence adduced at the trial shows that there are on the land agricultural improvements to the value of $1,000 or $1,200; that the

greater portion is inclosed with fencing, and seven or eight acres of it cultivated in fruits, vines, vegetables and grain; that the only active mining done on the tract was at the Gagen quartz mine, near the western boundary, and some placer diggings in the N. W. corner; that the owners of the quartz mine abandoned it, declaring that it was exhausted and worthless, and the diggings were abandoned for the same reasons; and that there are some quartz veins on adjoining lands that may run into this ¼, but that they are all either exhausted or unprofitable.

All the witnesses testify that, in their opinion, the land is more valuable for agriculture than for mining purposes.

The mineral affiants, though present at the trial, in person and by attorney, offered no testimony in support of their affidavits, but contented themselves with cross-examining the opposing witnesses.

I am of the opinion that the agricultural character of the land is established, and rule accordingly.

MILL-SITE MUST BE ON NON-MINERAL LAND.

Commissioner Drummond to Register and Receiver, Central City, Colorado, July 29, 1872.

The affidavits referred to do not allege the non-mineral character of said mill-site, but only allege that the same "does not to his knowledge contain any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper."

Before patent can issue for this mill-site, additional proof will be required that there are no "valuable deposits" such as placer or gulch mines, embraced within the exterior boundaries thereof.

DEPUTY MINERAL SURVEYORS.

Commissioner Drummond to W. M. Seawell, Aurora, Nevada, August 6, 1872.

A deputy mineral surveyor is not authorized to make surveys of mineral claims outside of the State or district for which he is appointed.

AGRICULTURAL *vs.* MINERAL CLAIMANTS. MORTGAGES GIVEN BY THE PRE-EMPTOR.

Acting Secretary W. H. Smith to Commissioner Drummond, August 6, 1872.

Although the land is shown to be in a mineral belt, and in the immediate vicinity of valuable placer and lode claims, yet I am satisfied, by a careful examination of the evidence transmitted with the appeal, that it is worthless for mining purposes, and that if it ever were paying ground, it has evidently been worked out. On the other hand, it is clearly established that the land is of very great value for agricultural purposes; that Clark has been in possession for twenty years; has cultivated it nearly all of this time, and has very valuable and lasting improvements thereon.

You refer to the execution of certain mortgages by Clark to one Shoemaker for a tract of land, including that in controversy, as a fact that might vitiate Clark's pre-emption right. Such is not, I think, the effect of these conveyances. One mortgage has been satisfied, and

proceedings upon the other are now barred by the statute of limitations of California. Neither is an agreement that can, by any possibility, cause the title of the claimant to inure to any other person or persons. They do not, therefore, prevent him from properly making the affidavit required by the thirteenth section of the pre-emption act.

PROOF OF CITIZENSHIP WHERE THE APPLICANT'S FATHER WAS A NATURALIZED CITIZEN.

Commissioner Drummond to Register and Receiver, Central City, Colorado, August 13, 1872.

Mr. Schweder makes affidavit that he was born in Germany, that he came to this country at the age of six years, and that he has an honorable discharge from the army.

In case Mr. Schweder's parents became naturalized before he arrived at the age of twenty-one, proof should be made of this point, as in this case he would be regarded a citizen.

The twenty-first section of the act of Congress approved July 17, 1862, (12 Stat., page 597), provides that any alien who has an honorable discharge from the regular or volunteer army, may become a citizen of the United States, upon his petition, without any previous declaration of intention to become a citizen of the United States.

DIAMOND—PRODUCING LANDS MAY BE PATENTED UNDER THE MINING LAWS.

Valuable mineral deposits defined.

Attorney-General Williams to Secretary Delano, August 31, 1872.

I have the honor to acknowledge the receipt of your communication of the twentieth instant, submitting for my official opinion the question whether or not title to public lands producing diamonds, can be acquired by individuals or associations under the act of Congress entitled, "An act to promote the development of the mining resources of the United States," approved May 10, 1872.

Section one of said act provides, "That all valuable mineral deposits in the lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States, and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners, in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States." Section six of said act also provides the mode in which a patent may be obtained for land claimed and located for "valuable deposits." Bainbridge, in his work on the law of mines and minerals, page one, says: "A mineral has been defined to be a fossil, or what is dug out of the earth. The term may, however, in the most enlarged sense, be described as comprising all the substances which now form, or which once formed, part of the solid body of the earth, both external and internal, and which are now destitute of, and incapable of, supporting animal or vegetable life. In this view it will embrace as well the bare granite of the high mountain as the deepest hidden diamonds and metallic ores."

Webster gives the following as the definition of a diamond: "A

mineral and a gem, remarkable for its hardness, as it scratches all other minerals." Diamonds are found under a variety of circumstances, and are generally obtained by mining. They are procured in India and South Africa by digging pits in the earth down to a peculiar stratum called the diamond bed.

In Brazil they are washed out of an agglomerate, composed of rounded white quartz pebbles and a light-colored sand. Diamonds, then, are clearly, "valuable mineral deposits," and the provisions of said act are as applicable to lands containing them, as to lands containing gold or other precious metals. Comprehensive words, no doubt, were used to include as well what might afterward be discovered, as what might be overlooked in an enumeration of minerals in the statute. Public lands, for the purposes of sale, are divided into agricultural and mineral lands. The minimum price of the former is $1.25, and of the latter $5.00 per acre; mineral lands, exclusive of their valuable deposits, are generally worth little or nothing. Prior to the act of July 26, 1866, (14 Stats. 257,) it was customary for persons to take those deposits without respect to the rights of the United States. Congress then provided a way in which persons locating lands for mining purposes might acquire title, and other acts have since been passed promotive of the same end. I think these acts ought to be most liberally construed, so as to facilitate the sale of such lands; for in that way, and not otherwise, can they be made to contribute something to the revenues of the government, and controversy and litigation in mining localities, to a great extent, prevented.

Acting Secretary Smith to Commissioner Drummond, September 3, 1872.

I concur in the views therein set forth, and they will guide your official action in cases of this character.

TUNNEL RIGHTS.

Commissioner Drummond to Hon. J. B. Chaffee, Denver, Colorado, September 20, 1872.

The line of the tunnel is held to be the width thereof and no more. and that upon this line only is prospecting for blind lodes prohibited while the tunnel is in progress, and that the right is granted to the tunnel owners to fifteen hundred feet of each blind lode, not previously known to exist, which may be discovered in such tunnel, but that other parties are in no way debarred from prospecting for blind lodes or running tunnels so long as they keep without the line of the tunnel as herein defined, the said line being required by our regulations to be marked on the surface by stakes or monuments placed along the same from the face or point of commencement to the terminus of the tunnel line aforesaid.

When a lode is struck or discovered for the first time by running a tunnel, the tunnel owners have the option of recording their claim of 1500 feet all on one side of the point of discovery or intersection, or partly upon one and partly upon the other side thereof; but in no case can they record a claim so as to absorb the actual or constructive possession of other parties on a lode which had been discovered and claimed outside the line of the tunnel before the discovery thereof in the tunnel.

ONE PERSON MAY SECURE PATENTS TO SEVERAL MINING CLAIMS.

Commissioner Drummond to John G. Irwin, Weaverville, California, September 21, 1872.

The mining statute does not restrict a party to one patent, but gives the right to proceed to procure government title to as many valid mining claims as he may have the possessory right to under local laws, and upon which the necessary amount has been expended in labor or improvements.

MILL SITES.

If located after the tract enured to a railroad, belong to the railroad company.

Commissioner Drummond to O. R. Leonard, Unionville, Nevada, Oct. 11, 1872.

In relation to the Golconda mine and mill site, the latter situated in Section 7, T. 35 N., R. 45 E., M. D. M., claimed by the Central Pacific Railroad Company, in virtue of their grant, I have to state that the records of this office show that the rights of said railroad company to said section of land took effect on the eighteenth day of December, 1866; that being the date upon which the route of said road was definitely located, subsequent to which time no adverse right thereto could attach where the land is not mineral in character.

PROCEEDINGS WHERE A MINING CLAIM IS NOT WITHIN THE LIMITS OF AN ORGANIZED DISTRICT.

Acting Commissioner Curtis to D. W. Lichtenthaler, La Grande, Oregon, Nov. 12, 1872.

In the event of a mining claim being situated outside of any regularly constituted mining district, affidavit of the fact should be made and secondary evidence of possesssory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to the location, occupation, and possession of such claim; and any deeds, certificates of location, or purchase, or other evidence, which may be in the claimant's possession and tend to establish his claim.

WYOMING MINE.

Proceedings to cancel patent.

Commissioner Drummond to Secretary Delano, Dec. 7, 1872.

I have the honor to state, that on the twentieth day of March, 1872, Alexander Majors, Allen Fowler, and R. C. Chambers, filed with the Register and Receiver at Salt Lake City, Utah, an application for patent for 1,000 linear feet of the Wyoming mine, situate in American Fork mining district, Utah.

On the thirtieth day of September, 1872, patent issued for said claim as applied for, no objection, protest, or adverse claim being on file in this office.

On the seventeenth day of October, 1872, the Register at Salt Lake City forwarded a protest and adverse claim of the Miller Mining and Smelting Company to said application for patent, which protest and adverse claim was filed with said Register, before the ninety days publication required by law had expired, and should have been forwarded

to this office, with the other papers in the case, before entry was allowed.

Upon the receipt at this office of said adverse claim, the Register and Receiver at Salt Lake City were directed to demand the return of said patent, the same having been delivered to said Fowler, Majors and Chambers in the mean time, which demand they refused to comply with.

In view of the fact that a patent has inadvertently and unlawfully issued to said applicants, which they refuse to return, I have the honor to suggest that the matter may be brought to the attention of the Attorney-General, with a request that the adverse claimants, to wit: the Miller Mining and Smelting Company, be permitted to prosecute a suit in the name of the United States, to secure the cancellation of said patent.

Acting-Secretary Cowen to Commissioner Drummond, January 17, 1873.

I transmit herewith for your information a copy of a letter of the fourteenth instant, from the Attorney-General of the United States, in relation to the setting aside of a patent improperly issued for certain mineral lands in Utah Territory.

Attorney-General G. H. Williams to Acting-Secretary Cowen, January 14, 1873.

I have the honor to acknowledge the receipt of your letter of the eleventh ultimo, inclosing a copy of one from the Commissioner of the General Land Office, in relation to the improper issue of a patent for certain mineral lands in Utah Territory; and in compliance with your request, I have given such instructions as were necessary to the U. S. Attorney for Utah to have said patent set aside.

AMENDMENT OF ADVERSE CLAIM.

Commissioner Drummond to A. J. Ridge, Grass Valley, California, Jan. 14, 1873.

When an adverse claim has been filed, the same cannot be amended, so as to embrace a larger portion of the premises applied for than that described in the original adverse claim.

HORRID *vs.* OLD MISSOURI.

Where all but one of several co-tenants withdraw an adverse claim, the courts must decide the controversy.

Commissioner Drummond to Register and Receiver, Central City, Colorado, Feb. 12, 1873.

On the nineteenth April, 1872, Wm. H. Pier filed an adverse claim to said application for patent, alleging in his sworn statement that the premises described in said application for patent embrace and include the Horrid lode, owned in equal and undivided interest by J. P. Arey, James A. Varnes, Philip Paul and myself, "by right of discovery, location and purchase;" that no discovery was made and that no work was done by the said William A. Hamill upon said premises, as described in said diagram of said so-called Old Missouri lode, until after the said Horrid lode was discovered, its discovery shaft sunk to a depth of eleven feet, and recorded in accordance with the laws of said mining district and of Colorado Territory;" that the open cut claimed as the

discovery of said Old Missouri lode, is upon the Horrid lode, and was excavated by one of said adverse claimants.

Wm. H. Pier filed proof of citizenship and an abstract of title from the office of the County Clerk and Recorder of Clear Creek county, Colorado, by which it appears that seven persons located fourteen hundred feet of the Horrid lode, and made record thereof on the sixth May, 1869, and that the record title to said premises is now in Wm. H. Pier, Philip Paul, James A. Varnes and J. P. Arey.

On the sixth December, 1872, the attorneys for the applicant for patent filed with their argument several inclosures.

One of these inclosures is signed "Philip Paul," and after reciting the circumstances attending the filing of the adverse claim, concludes as follows, viz: "I, the said Philip Paul, do hereby withdraw the said adverse claim so filed, and declare it to be my intention not to any longer contest the right of the aforesaid Wm. A. Hamill to a United States patent to his said claim," etc.

A similar withdrawal, signed "James A. Varnes, by John Fillins, attorney in fact," is also on file.

Pier, having made out a *prima facie* adverse showing to said application, cannot be denied his right and privilege, under the mining acts of Congress, of having his adverse right adjudicated in a court of competent jurisdiction, by reason of two of his co-tenants having declared their "intention not to any longer contest the right of the aforesaid William A. Hamill to a United States patent to his said claim."

You will therefore inform all parties in interest that thirty days from the date of your notification will be allowed the said Wm. H. Pier *et al.* to institute proceedings in a court of competent jurisdiction to determine the right of possession to the premises in dispute.

DIVIDED AND UNDIVIDED INTERESTS.

Commissioner Drummond to William Singer, Marysville, California, February 18, 1873.

Where several parties own undivided interests in a mining claim, it is necessary that all the owners should join in an application for patent. Where several parties own separate and distinct portions of a claim, application for patent may be made by either of said parties for that portion of the claim owned by him if he desires.

CALIFORNIA *vs.* DARDANELLES.

Adverse claim was rejected because not sworn to within the U. S. land district where the mine is located.

Commissioner Drummond to Register and Receiver, Carson City, Nevada, March 7, 1873.

Upon examination of the papers transmitted with your letter of the 24th January last, I find that on the 22d of October, 1872, the Dardanelles Mining Company filed in your office an application for patent for twelve hundred linear feet of the Bosphorus lode, with surface ground four hundred feet in width, situated in Gold Hill mining district, Storey county, Nevada.

On the 20th day of December, and before the expiration of the sixty days publication required by law, the California Silver Mining Company

by its President, A. K. P. Harmon, filed a protest against the issuance of patent for the premises described in said application.

This protest was sworn to by Mr. Harmon, before "P. O. Wegener, Notary Public and Commissioner of Deeds, for the State of Nevada, in the city and county of San Francisco, California."

The seventh section of the mining act of May 10, 1872, requires "That where an adverse claim shall be filed during the period of publication, it shall be upon oath of the person, or persons, making the same," etc. And the thirteenth section of the same act declares that "All affidavits required to be made under this act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land district where the claim may be situated," etc.

By the foregoing it will be seen, that the law requires that an adverse claim should be sworn to before some officer authorized to administer oaths within the land district where the claims may be situated.

In the case under consideration, the provision of the law was disregarded, and the papers constituting the adverse claim were sworn to, not in the Carson City land district, but in the city of San Francisco, California.

It seems to be the letter and the spirit of the law to bring parties, who desire to assert an adverse claim to an application for patent under the act of May 10, 1872, within the jurisdiction of the courts where the claim is situated.

The adverse claim of the California Silver Mining Company is rejected.

PATENT MAY ISSUE TO ASSIGNEE OF APPLICANT.

Commissioner Drummond to Gen. Lloyd Aspinwall, New York, March 8, 1873.

Patents for mining claims are issued to the parties named in the Register's certificate of entry.

If the applicants for patents for the mines referred to, sold to you the premises described in their applications, after they had commenced proceedings to obtain patents, but before the entry was made at the local office, the Register's certificate and the Receiver's receipt should have been made out in your name.

Upon your filing a deed from said applicants to you, in this office, the Register and Receiver will be instructed to have their certificates and receipts made out in your name.

If, however, you became the purchaser since the date of entry, an indorsement should be made upon the duplicate receipts by the applicants for patent, assigning all their right and title in and to the premises described therein to you, in which event the patent would issue in your name.

CLAUSE INSERTED IN PATENTS ISSUED FOR CLAIMS ON OR NEAR THE COMSTOCK LODE, NEVADA.

Commissioner Drummond to Adolph Sutro, Washington, D. C., March 8, 1873.

The Register and Receiver at Carson City, Nevada, were instructed, on the twenty-ninth July, 1870, of the construction which has been given the act of Congress approved July 25, 1866, "granting to A.

Sutro the right of way and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada."

The instructions contained in said letter, of which you have been furnished a copy, are still in force.

In issuing patents for the Comstock lode, or those in the immediate vicinity thereof, the following clause is inserted, viz:

"That the claim hereby granted and conveyed shall be subject to the condition specified in the third section of the act of Congress approved July 25, 1866," granting the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada, "and the grantee herein snall contribute and pay to the owners of the tunnel, constructed pursuant to said act, for drainage or other benefits derived from said tunnel or its branches, the same rate of charges as have been or may hereafter be named in agreement between such owners and the companies representing a majority of the estimated value of said Comstock lode, at the time of the passage of said act, as provided in said third section."

By reference to the inclosed circular you will perceive that both the acts of July 9, 1870, and May 10, 1872, contain clauses guarding the rights of the owners of the Sutro tunnel.

The land which is embraced by the location of the tunnel has been withdrawn from sale, in accordance with said letter from this office of July 29, 1870.

JENNY LIND *vs.* EUREKA.

In estimating the sixty days of publication, the first day of publication is excluded, and the last day included.

The jurat to the adverse claim must be made by the party, and cannot be made by an attorney.

Where several parties unite in an adverse claim, the jurat is sufficient if made by one of such persons.

The filing of an adverse claim with the Register as a sufficient filing.

The adverse claim of the Jenny Lind does sufficiently set forth the nature of the claim.

If the adverse claimants properly allege that they are the owners of the claim, it is sufficient. The omission to file an abstract of title is an irregularity, and should not defeat an adverse claim.

Commissioner Drummond to Register and Receiver, Salt Lake City, Utah, March 26, 1873:

On the twenty-first August, 1872, the Eureka Mining Company of Utah filed in your office applications for patents for the Eureka and Montana lodes, situate in Tintic mining district, Juab county, Utah.

In each of these cases the applicants have filed proof of compliance with the mining law, and the instructions from this office.

The following adverse claims were filed against the application for patent for the Montana lode, viz.:

First. Peter Roberts *et al.* filed an adverse claim on the fourth October, 1872, and withdrew the same on the twenty-third November, 1872.

Second. E. M. Peck *et al.* caused to be handed to the Register, at his house, on the twenty-second October at 11:30 p. m., an adverse claim to said application for patent, which was by the Register placed on file in his office, on the morning of October 23, 1872.

This adverse claim is accompanied by a plat and field notes of sur-

vey of the Excelsior lode, claimed by Peck *et al.* The attorney for said adverse claimants, however, alleges, under oath, that said plat and field notes do not properly locate or describe the premises owned by said adverse claimants.

The sixth section of the mining act of May 10, 1872, declares that "if no adverse claim shall have been filed with the Register and the Receiver of the proper land office, at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard," etc.

In each of the cases referred to, viz.: the Eureka and Montana lodes, the notice of intention to apply for a patent was first published in the *Weekly Tribune*, bearing date Saturday, August 24, 1872, although, in fact, the paper was issued and put in circulation on Friday, August 23, 1872, and by the affidavits of the bookkeeper and agent of the *Tribune* Publishing Association, it appears that the *Weekly Tribune* "is printed, published, and issued from the office on Friday of each week."

This office is of the opinion that in computing the time for the sixty days publication required by law, the date of the paper, as given thereon, should govern.

Under the rule adopted by my predecessor, and which has been followed in all cases of this class decided since the act of July 26, 1866, went into effect, the day of publication of notice has been included in the computation of time.

Although I have some doubt as to the correctness of this rule, I do not feel disposed to depart from it, unless it should be reversed by the Head of the Department, and therefore decide that the adverse claim asserted by said E. M. Peck *et al.*, was not filed within the sixty days publication required by law, and the same is accordingly rejected.

In case of the application for patent for the Eureka lode, the following adverse claims were filed, viz:

First. Peter Roberts *et al.* filed an adverse claim to said application for patent on the twenty-second October, 1872, and withdrew the same on the twenty-third November, 1872.

Second. O. D. Strong *et al.* caused to be handed to the Register at his house, on the twenty-second October, 1872, at 11:30 p. m., an adverse claim to said application for patent, which by the Register was placed on file in his office on the morning of October 23, 1872.

This adverse claim is not made out in the manner prescribed by law, and by the instructions from this office. No plat or field notes of survey of the May Henrietta lode is on file, showing the "nature, extent and boundaries" of the premises claimed by Strong *et al.* No abstract of title has been filed to show the record title to the May Henrietta lode to be in the adverse claimants.

This adverse claim was not filed within the sixty days publication required by law, and is therefore rejected.

Third. The adverse claim of Aspinwall and Page was filed in the same manner and at the same time as the last named adverse claim.

This adverse claim is also irregular. No plat or field notes of survey of the King David lode has been filed, showing the "nature, extent and boundaries" of the premises claimed by said Aspinwall and Page.

No abstract of title has been filed, showing the record title to said King David lode to be in said adverse claimants.

This adverse claim was not filed within the period of time prescribed by law, and is accordingly rejected,

Fourth. The Jenny Lind Mining Company caused to be handed to the Register at his house, on the twenty-second October, 1872, at 11:10 p. m., an adverse claim to said application for patent, which, by the Register, was placed on file in his office on the morning of the twenty-third October, 1872.

This adverse claim is in the main made out in the form prescribed by law and by the instructions from this office, although no abstract of title is on file from the office of the proper Recorder, tracing the title from the original locators to the Jenny Lind Mining Company.

This adverse claim was not filed within the time prescribed by law, and cannot operate as a bar to the issuance of a patent as applied for, and the same is rejected.

The only adverse claims filed within the time required by law are those of Peter Roberts *et al.*, and both of these have been withdrawn.

Secretary Delano to Commissioner Drummond, November 24, 1873.

I have carefully examined the case of the Eureka Mining Company *vs.* The Jenny Lind Mining Company *et al.*, on appeal from your decision of the twenty-sixth day of March, 1873. I caused the same to be referred to the Assistant Attorney-general Smith for an expression of his views upon the questions involved, and have received from him two opinions, one of which is dated September 30th ult., and the other the twenty-second inst., copies of which you will find inclosed.

I concur with him in the conclusions at which he has arrived, and, in accordance therewith, hold:

First. That in estimating the sixty days of publication required by the act of May 10, 1872, the first day of publication should be excluded and the last included.

Second. That the jurat to the adverse claim, required by the seventh section of said act, must be made by the party, and cannot be made by an attorney.

Third. That where several parties unite in an adverse claim, the jurat is sufficient if made by one of such persons.

Fourth. That the filing of an adverse claim with the Register is a sufficient filing under the said act; and

Fifth. That the adverse claim of the Jenny Lind Mining Company does sufficiently set forth the "nature" of said claim.

I affirm so much of your decision as rejects the adverse claims of the May Henrietta lode, the Excelsior lode, and the King David lode; and reverse so much as rejects the adverse claim of the Jenny Lind Mining Company.

[Inclosure No. 1.]

Assistant Attorney-general W. H. Smith to Secretary Delano, September 30, 1873.

I have considered the appeal of the Jenny Lind Mining Company and others, adverse claimants, in the matter of the application of the Eureka Mining Company, for a patent for the Eureka and Montana

lodes, situated in Tintic mining district, Juab county, Utah. The Eureka company filed their application on the twenty-first of August, 1872, under the act of May tenth, 1872, and on the twenty-fourth of August, 1872, the Register gave notice of such application by publication in the *Weekly Tribune* of that date, which was continued for sixty days.

The Jenny Lind company, and the other adverse claimants now contesting, filed their adverse claims with the Register of the proper land office. These filings severally bear date October 22, 1872, at 11:30 o'clock, p. m.

It is contended by the Eureka company, that as a matter of fact, said adverse claims were left with the Register, on the twenty-second of October, 1872, at 11:30 p. m., at his house, which was distant about a quarter of a mile from the land office, and were not filed in the office of the Register until the twenty-third of October, 1872, and that such filings in the office on the twenty-third were too late, the sixty days of publication having expired on the twenty-second. It is also contended by the Eureka company, that the adverse claims of some of them were not prepared with the necessary formality, and did not contain proper plats of survey or abstracts of title, and were otherwise defective.

The Commissioner of the General Land Office held that the adverse claims were filed one day too late, and therefore he rejected them.

I shall first consider the question whether the filing was too late, upon the assumption that it was not made until the twenty-third October, 1872.

The sixth section of the act of May 10, 1872 (17 Stats., 93), provides that an applicant for a patent for mineral lands shall file in the proper land office an application under oath, with a plat, etc., and that "the Register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to said claim, and he shall also post such notice in his office for the same period."

The seventh section provides: "That where an adverse claim shall have been filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim; and all proceedings, except the publication of notice and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived."

From the foregoing express provisions of law, it appears that the time of publication is "for the period of sixty days," and that the adverse claim must be filed "during the period of publication," that is, during "the period of sixty days." When does this "period of sixty days" begin, and when terminate? Does it include or exclude the first day of publication? If it includes it, then, upon the assumption that the adverse claims were not filed until the twenty-third October, they were filed one day too late. On the other hand, if it excludes it, then the filings were in time.

The inquiry presented is one which has been a vexed question for centuries, and has been decided differently by the ablest courts in this country and in England. It has been appropriately termed the *contro-*

No abstract of title has been filed, showing the record title to said King David lode to be in said adverse claimants.

This adverse claim was not filed within the period of time prescribed by law, and is accordingly rejected,

Fourth. The Jenny Lind Mining Company caused to be handed to the Register at his house, on the twenty-second October, 1872, at 11:10 p. m., an adverse claim to said application for patent, which, by the Register, was placed on file in his office on the morning of the twenty-third October, 1872.

This adverse claim is in the main made out in the form prescribed by law and by the instructions from this office, although no abstract of title is on file from the office of the proper Recorder, tracing the title from the original locators to the Jenny Lind Mining Company.

This adverse claim was not filed within the time prescribed by law, and cannot operate as a bar to the issuance of a patent as applied for, and the same is rejected.

The only adverse claims filed within the time required by law are those of Peter Roberts *et al.*, and both of these have been withdrawn.

Secretary Delano to Commissioner Drummond, November 24, 1873.

I have carefully examined the case of the Eureka Mining Company *vs.* The Jenny Lind Mining Company *et al.*, on appeal from your decision of the twenty-sixth day of March, 1873. I caused the same to be referred to the Assistant Attorney-general Smith for an expression of his views upon the questions involved, and have received from him two opinions, one of which is dated September 30th ult., and the other the twenty-second inst., copies of which you will find inclosed.

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Third. That where several parties unite in an adverse claim, the jurat is sufficient if made by one of such persons.

Fourth. That the filing of an adverse claim with the Register is a sufficient filing under the said act; and

Fifth. That the adverse claim of the Jenny Lind Mining Company does sufficiently set forth the "nature" of said claim.

I affirm so much of your decision as rejects the adverse claims of the May Henrietta lode, the Excelsior lode, and the King David lode; and reverse so much as rejects the adverse claim of the Jenny Lind Mining Company.

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lodes, situated in Tintic mining district, Juab county, Utah. The Eureka company filed their application on the twenty-first of August, 1872, under the act of May tenth, 1872, and on the twenty-fourth of August, 1872, the Register gave notice of such application by publication in the *Weekly Tribune* of that date, which was continued for sixty days.

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It is contended by the Eureka company, that as a matter of fact, said adverse claims were left with the Register, on the twenty-second of October, 1872, at 11:30 p. m., at his house, which was distant about a quarter of a mile from the land office, and were not filed in the office of the Register until the twenty-third of October, 1872, and that such filings in the office on the twenty-third were too late, the sixty days of publication having expired on the twenty-second. It is also contended by the Eureka company, that the adverse claims of some of them were not prepared with the necessary formality, and did not contain proper plats of survey or abstracts of title, and were otherwise defective.

The Commissioner of the General Land Office held that the adverse claims were filed one day too late, and therefore he rejected them.

I shall first consider the question whether the filing was too late, upon the assumption that it was not made until the twenty-third October, 1872.

The sixth section of the act of May 10, 1872 (17 Stats., 93), provides that an applicant for a patent for mineral lands shall file in the proper land office an application under oath, with a plat, etc., and that "the Register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to said claim, and he shall also post such notice in his office for the same period."

The seventh section provides: "That where an adverse claim shall have been filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim; and all proceedings, except the publication of notice and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived."

From the foregoing express provisions of law, it appears that the time of publication is "for the period of sixty days," and that the adverse claim must be filed "during the period of publication," that is, during "the period of sixty days." When does this "period of sixty days" begin, and when terminate? Does it include or exclude the first day of publication? If it includes it, then, upon the assumption that the adverse claims were not filed until the twenty-third October, they were filed one day too late. On the other hand, if it excludes it, then the filings were in time.

The inquiry presented is one which has been a vexed question for centuries, and has been decided differently by the ablest courts in this country and in England. It has been appropriately termed the *contro-*

versia controversissima (Griffith *vs.* Bogert, 18 How., 162). I shall not attempt to review the cases, for the reason that my official duties are such as not to allow the necessary time. I have carefully examined them, and from such examination, am of opinion that the first day of publication should be excluded. When a computation of time is to commence from an act done, the day on which the act is done is to be excluded. In support of this view I cite the following authorities: 4 Kent 103 (note) 11 ed.; 2 Parsons' Cont., 663 (note); Pope *vs.* Headen, 5 Ala. 433; Lyon *vs.* Hunt, 11 Ala. 295; Lang *vs.* Phillips, 27 Ala. 311; Kim *vs.* Osgood, 19 Miss. 60, 25 Miss. 48; Bigelow *vs.* Wilson, 1 Pick. 485; State *vs.* Schwerle, 5 Pick. 279; Wiggins *vs.* Peters, 1 Met. 127; Farwell *vs.* Rogers, 4 Cush. 460; Weeks *vs.* Hull, 19 Conn. 376; Carleton *vs.* Bying, 16 Iowa, 588; Caruthers *vs.* Wheeler, 1 Oregon 194; Judd *vs.* Fulton, 10 Bart. 117; Russell *vs.* Russell, 11 Bart. 96; Cornell *vs.* Moulton, 3 Denio, 12; Barr *vs.* Lewis, 6 Texas 76; State *vs.* Gascon, 33 Miss. 102; Cann *vs.* Warner, 1 Houston (Del.) 88; Gorham *vs.* Wing, 10 Mich. 486; Sheets *vs.* Selden, 2 Wall, 177; Page *vs.* Weymouth, 47 Maine, 238; Walsh *vs.* Boyle, 30 Maryland, 262; Thorne *vs.* Mosher, New Jersey Eq. 257; Rex *vs.* Cumberland, 4 How. & M. 378; Gout *vs.* Edwards, 11 Sim. 434; Wilkinson *vs.* Gaston, 9 Queen's Bench, 141.

The cases also establish the proposition that when there is a doubt as to whether the day in which an act is done should be included or excluded, that construction should be adopted which will support a contract or deed, rather than that which would destroy it; that which will prevent a forfeiture, rather than that which would create one; and in cases of statutory enactment, that which will be most favorable to the party for whose benefit the statute was enacted.

In the case under consideration, the provision that there should be a publication of sixty days was made for the benefit of adverse claimants, and for the purpose of giving them an opportunity to assert their adverse claims; and in case of doubt as to whether the first day of publication should be included, or excluded, that doubt should, in my opinion, be decided in favor of the adverse claimants. I have proceeded thus far upon the assumption, that the adverse claims in the case now under consideration, were not filed until the 23d October, and upon such assumption I think they were filed in time.

There is another view that may be taken of this case, which leads to the same conclusion. These adverse claims all bear an official indorsement, that they were filed on the 22d October, 1872, at 11:30 p. m. Such indorsement is *prima facie* evidence that they were filed in the proper office at that date, and this legal presumption, if removed at all, must be removed by competent evidence. The only proof that has been offered to rebut this presumption, and show that there was no filing in the land office until the 23d October, is an unsworn certificate of the Register made in Washington City, on the 1st of March, 1873, in which he states that the adverse claims were left at his house at 11:30 p. m., October 22d, and on the next day taken to the land office, and marked filed as of the 22d, 11:30 p. m.

I am of opinion that this is incompetent evidence, that the official act of a sworn officer cannot be contradicted or explained by an unsworn statement like this, made long after the *res gesta*.

I think the adverse claims were filed in time, and that the Commissioner erred in rejecting them on the ground that they were not so filed.

The Commissioner mentions the fact that some of the adverse claims were irregular, in not being accompanied with a plat of survey and field notes. It is pretty satisfactorily shown in the evidence that the protestants made use of reasonable means to procure such survey and field notes, and that they were prevented from so doing by the act of the Eureka company, in obtaining control of the United States deputy surveyors, and thereby preventing them from making the survey for adverse claimants.

To allow that company to exclude the adverse claims for that reason, would be to permit it to take advantage of its own wrongful act. The regulations issued by the Commissioner, it is true, require that there shall be such a plat and field notes, but they do not have the force of law, and were never intended to operate as a bar, where an applicant in good faith has done all that was in his power to comply with them.

And so with reference to the abstract of title. It is convenient to have such abstract for the purpose of showing how the claimant derives title, and therefore the adoption of the rule by the Commissioner.

If the adverse claimants properly allege that they are the owners of the claim, that is good pleading, and sufficient to notify the applicant for patent of what is claimed. I think an omission to file this abstract should be treated as an irregularity only, and not as a defect that vitiates the adverse claim. No one is injured by the omission, and it would be extremely technical to treat it as good cause for rejecting the claim.

I have now noticed all the objections mentioned by the Commissioner. Some others have been urged in the argument on appeal. It is objected that the affidavit to the adverse claim of the Jenny Lind company was made by W. J. Hooper, as president of the company, and that there is no sufficient evidence that he was president. It is claimed that the best evidence would be a certified copy from the record showing his election. Hooper states in the adverse claim that he is the president of the company, and swears to that statement. That is, I think, sufficient.

It is further objected that there is no sufficient evidence that W. M. Gillespie, before whom Hooper made the affidavit, was a notary public, or had authority to administer oaths. The certificate of Gillespie is under his official seal as notary public. That is sufficient evidence of his being notary. The power to administer oaths is given to notaries public in any State or Territory, by the act of Congress of September 16, 1850 (9 Stat., 458). It is also objected that one of the affidavits on file purports to have been made before a person as justice of the peace, and that there is no evidence that such person was a justice of the peace, except his own signature as such justice.

It is the constant practice in the land office to receive and consider affidavits made before persons professing to act as justices of the peace, without other evidence of their authority; and it would take those who practice in that office by surprise to enforce the rule that such affidavits could not be considered, without proof of the official character of the

persons before whom they are taken, and who profess to be justices of the peace. I think the objection altogether too technical, and that it should be overruled.

It is further objected that in certain of the adverse claims there is not sufficient evidence that suits have been brought on such claims, within thirty days from the time of filing them with the Register.

It appears from the certificate of the clerk of the court, that the persons who brought the suit, and are alleged to compose the unincorporated company, are not the persons who originally located the claim, and therefore it is said the company is not the one which filed the adverse claim.

Mining claims are constantly changing owners. They are often assigned after location and before patent. The members who own the stock at the time suit is brought, are the proper parties plaintiff, and it does not follow that the company is not the same because the stockholders are different. They allege that they compose the company, and that, I think, is sufficient.

They are not, and should not be, required to prove that they are the original locators, or that they are the identical persons who presented the adverse claim.

Some other objections are made, which present the question whether the adverse claimants are required to show affirmatively that they have complied with all the local usages and customs. I think they are not. If they have failed to comply with such usages, and a forfeiture is denounced for such failure, that is a matter of defense.

There is still another objection, of more gravity than some I have mentioned, and that is this: it is argued that all these adverse claims were improperly filed, because they were filed with the Register only, when they should have been filed with the Register and Receiver.

The sixth section of the act requires that the application for patent shall be filed "in the proper land office;" that the applicant shall post a notice of such application on the land, and file a copy of the notice "in such land office;" that the Register of the land office "shall publish such notice for the period of sixty days," and post it "in his office" for the same period; that the claimant shall file "with the Register" a certificate of the U. S. Surveyor that $500 worth of labor has been expended; that at the expiration of the sixty days of publication, the claimant shall "file his affidavit (without saying where, but manifestly with the Register), showing that the plat and notice have been posted in a conspicuous place on the claim, during the period of publication;" and then it proceeds that "if no adverse claim shall have been filed with the Register and Receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent," etc.

The Commissioner, in his regulations issued under this act, required that the adverse claim should be filed with the Register, or in his absence with the Receiver. Of course, the Commissioner cannot make the law, and if he has made a regulation that is in conflict with it, the regulation must fall.

Is there such a conflict? Did Congress intend that these claims should be filed with both officers, or that the adverse claim should be in duplicate? It was a fact well known to Congress, that the offices

of Register and Receiver are kept together, and are one and the same office. This is almost universally the case. All the records of the office are in the custody of the Register. The Receiver has but little to do with them. He receives the money and gives a receipt therefor, and that is the main part of his duties. A filing in the office of the Register, with him, is in substance a filing with the Receiver. I cannot believe that Congress intended that the same document should be taken to the Register and Receiver and marked filed by each of them, or that two copies should be filed, one with the Register and the other with the Receiver. That would be to require a useless thing, which should never be presumed.

I prefer to hold that a filing with the Register was a filing with the Register and Receiver, within the spirit and meaning of this act.

After the most careful consideration that I have been able to give this case, I am of opinion that the decision of the Commissioner was erroneous, and I advise that it be reversed.

[Inclosure No. 2.]

Assistant Attorney-general Smith to Secretary Delano, Nov. 22, 1873.

In the case of the Jenny Lind Mining Company and other adverse claimants against the Eureka Mining Company, before you on appeal from the decision of the Commissioner of the General Land Office, in accordance with your request, I had the honor to give my opinion upon the merits of the case on the thirtieth of September last. Since then other points have been made by counsel for the Eureka company, and at your like request I will proceed to state my views upon them.

The Eureka company objects to each of the following adverse claims, to wit: The May Henrietta lode, the Excelsior lode, and the King David lode, for the reasons that they were severally sworn to by D. Cooper as attorney, instead of by the persons, or some of them, who are alleged to be the owners thereof. The parties owning these lodes are unincorporated companies.

The seventh section of the act of May 10, 1872, provides: "That where an adverse claim shall be filed during the period of publication, it shall be upon oath of the person, or persons, making the same."

It does not provide that it may be upon the oath of an agent or attorney. Without statutory authority, an attorney cannot make the oath for his client. I find myself obliged to advise that the above-named adverse claims were not properly verified, and for that reason should be rejected.

It is further objected by the Eureka company, that the protest and adverse claim of the Jenny Lind company was sworn to but by one (W. G. Hooper), where it should have been sworn to by all the persons composing the company.

In my opinion, the statute is complied with when any one of the persons asserting an adverse claim makes affidavit to the same. Such person is the representative of all.

It is well known that mining claims are often owned by many persons living at a great distance from the mine. To require each owner to appear in the land district where the mine is located, and make affidavit before an officer authorized to administer oaths in that district (as must be done under the law), and that, too, within the sixty days

of publication, would be an unnecessarily harsh administration of the law, and would in many cases practically nullify the right of presenting an adverse claim. As in legal proceedings, one plaintiff or defendant may make jurat for his co-plaintiffs or defendants, so I think one adverse claimant may make it for all his co-claimants.

It is further objected by the Eureka company, that the adverse claim of the Jenny Lind company is defective in this, that it alleges ownership by location of the South Extension of the Bullion lode, the Queen Victoria lode and the Pride of the West 2d lode, while the record of location shows that they were made by persons some of whom were not members of the Jenny Lind company, and that there is no allegation or proof that such persons have ever assigned or conveyed their interest to the company, and therefore it is urged the adverse claim does not "show" its "nature," as required by the seventh section of the act.

I suppose that the provisions of law relating to adverse claims should receive a reasonable interpretation. They were made to be construed by local land officers, many of whom have never had a legal education, and they should be construed as men of good practical common sense would be expected to construe them. It was never intended by the law-makers that such a claim should be construed with the technical precision that a lawyer would be justified in applying to an indictment.

It was intended that the instrument should be so drafted as to inform a person of good sense that a portion of the mining claim which he was seeking to obtain a patent for, did not belong to him, but did belong to the protestant, and it was intended that this should be done with such precision as to fairly advise him of the "nature, boundaries and extent" of the adverse claim, so that he might prepare himself to establish, on the trial before the courts, his own and defeat the adverse claim.

I think the adverse claim of the Jenny Lind company does furnish such information to the Eureka company. It gives the boundaries and extent of its claim with such precision that no objection is made on that account. The objection relates to the "nature" of the claim.

It alleges that it is the "lawful owner and entitled to the possession of about eleven hundred feet of the said Eureka lode;" that it "is the owner, by location of the persons composing said association, and in possession of the following named lodes or veins of quartz and other rock in place bearing silver and other metals, viz: the South Extension of the Bullion lode, the Queen Victoria lode, and the Pride of the West 2d lode, situated, located and recorded in the Tintic mining district, Juab County, Utah Territory;" that "on the seventeenth day of March, A. D. 1871, the several premises hereinafter described were mineral lands of the public domain, and each contained a vein or lode of quartz and other rock in place bearing and containing silver and other minerals, and said premises were entirely vacant and unoccupied, and were not owned, held or claimed by any person or party as mining claims or otherwise, and that while the same were so vacant, unoccupied and unclaimed, the persons (see Exhibit B) forming the association known as the Jenny Lind Mining Company, each and all being citizens of the United States at the time, did enter upon and explore and discover the South Extension of the Bullion, containing three

thousand (3,000) feet, linear measurement, which was located March 20th and recorded April 10, 1871, the Queen Victoria lode containing two thousand (2,000) feet, linear measurement, located March 17th and recorded March 18th, 1871, and the Pride of the West 2d lode, containing sixteen hundred (1,600) feet, linear measurement, located June 21, 1871, and recorded September 19, 1871." That "the said Jenny Lind company, and the persons composing the same, have continuously held and occupied and been in the actual possession of the mining premises and lodes since the date of location of the same, with the knowledge of the Eureka company and its agents, and without any opposition whatever from it" (Eureka company). That "the locators of said lodes and the Jenny Lind Mining Company respectively, have in all respects complied with every custom, rule, regulation and requirement of the mining laws of said mining district, and thereby became, and are, owners (except as against the paramount title of the United States) and the rightful possessors of said mining claim and locations;" and that "the vice-president of the Eureka company, at the time of his filing the application therefor, well knew that the Jenny Lind Mining Company was the owner in possession and entitled to the possession of so much of said mining ground embraced within the survey and plat of said applicant as is hereinbefore stated, and the said Jenny Lind Mining Company is entitled to all the silver and other metals in said Southern Extension of the Bullion lode, the Queen Victoria and the Pride ot the West 2d lodes."

It further appears from the statements of said adverse claim that the Eureka company on the tenth day of October, 1872, entered into a written contract which was proffered to the Jenny Lind company, but never executed by it, in which the Eureka offered to convey to the Jenny Lind, when patent should be issued to it, the said Bullion, Queen Victoria and Pride of the West lodes, in consideration that the Jenny Lind company would refrain from filing an adverse claim to the application of the Eureka company for patent.

The said writing contains the following (among other things): "and whereas, said party of the first part" (the Eureka company) "has no claim to any part of said Queen Victoria, Pride of the West, and Bullion locations, their dips, angles and spurs."

The above are the allegations of the adverse claim. I think they fairly inform the applicant for patent of its nature.

They state that the Jenny Lind company is the owner of said Bullion and other lodes, by location. It is true that some of the exhibits show that the persons who organized the Jenny Lind company were not identical with some of the locators of said lodes. But what of that? Suppose the adverse claim had alleged ownership by location and the exhibits had shown ownership by purchase? The claim would, undoubtedly, have been good. The material thing is ownership, in accordance with the rules and regulations of miners. All that is alleged, and it is also alleged that the Eureka had full knowledge of the ownership and possession, and never asserted any claim to the contrary.

The statement in the written agreement goes further, and admits that said company had no claim to any part of the said lodes of the Jenny Lind company. It is claimed that this admission should not be regarded in the case, because it was made pending a treaty of com-

promise. Grant it, yet it is the admission of a fact made without any stipulation that it should be without prejudice, and according to the American cases is receivable as an admission against the Eureka company. Mount *vs.* Bogart, Anthon, 190; Maney *vs.* Carter, 4 Conn. 635; Fuller *vs.* Hampton, 5 Conn. 416; Sanborn *vs.* Neilson, 4 N. H. 501; Delogey *vs.* Rentoul, 1 Martin 175; Marvin *vs.* Richmond, 3 Den. 58; Cole *vs.* Cole, 34 Maine, 542.

Now, taking all these allegations as true (which must be done in determining the sufficiency of this adverse claim), and I do not see how it can be claimed that the Eureka company is not sufficiently informed of the nature of the claim. I think it was so informed, and I advise that so much of the Commissioner's decision as rejected the Jenny Lind mining company's adverse claim be reversed, and so much as rejected the other adverse claims be affirmed.

PAPERS FILED IN THE LOCAL LAND OFFICE.

Commissioner Drummond to Register and Receiver, Salt Lake City, Utah, April 4, 1873.

Applicants for patent have the right to examine any and all papers that are filed with the Register and Receiver, in the nature of protests or adverse claims to their applications for patents, but in no case should the local land officers permit papers which have been filed with them to be taken out of their office.

OVERMAN *vs.* DARDANELLES.

Commissioner Drummond to Register and Receiver, Carson City, Nevada, April 11, 1873.

Your action in entertaining "a motion to dismiss the adverse claim," was wholly unauthorized by the law, the instructions issued thereunder, and the practice of this office.

The mining act of May 10, 1872, declares, "that where an adverse claim shall be filed during the period of publication, it shall be upon the oath of the person, or persons, making the same, and shall show the nature, boundaries and extent of such adverse claim, and all proceedings, except the publication of notice, and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided in a court of competent jurisdiction."

The Register and Receiver have no authority to "dismiss an adverse claim," nor to receive additional proof either from the applicant for patent, or the adverse claimant, after the time prescribed by law for publication has expired, and before the "controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived," unless such adverse claimant shall fail to commence proceedings in court within the time required by law, to wit: "within thirty days after filing his claim;" in which last event the application will be allowed to proceed as if no adverse claim had been asserted.

Should the Register and Receiver decide that an adverse claim has been made out in proper form and stay proceedings upon the application for patent, the applicants for patent may appeal from such decision to the Commissioner of the General Land Office; and, on the contrary, should the local land officers decide that no adverse claim made in the proper form had been filed, the adverse claimants have the right to appeal from said decision to this office.

But in no event can additional proof of any kind be received upon such appeal.

Should an appeal be taken from your decision either that an adverse claim has been made out, or that it has not been made out, you will inform all parties in interest of such appeal, and forward all the papers in the case, with such arguments as may have been filed by the respective parties, to this office for review and decision.

The appeal of the Dardanelles company from your decision granting the Overman company twenty days to file counter affidavits in case of the motion of the Dardanelles company to dismiss adverse claim, has been dismissed, as you were informed on this day.

OFFICIAL LETTERS.

Commissioner Drummond to Register and Receiver, Austin, Nevada, April 14, 1873.

All official letters sent to, as well as the official record of letters sent by the Register and Receiver, are the property of the United States, and as such should be retained in the office of such Register and Receiver.

TUNNEL LOCATIONS.

Commissioner Drummond to General George P. Ihrie, San Francisco, California, April 15, 1873.

There is no provision of law for patenting tunnel locations. Such lodes, however, as are discovered in running a tunnel, may be patented, upon full compliance with the law.

MINERS CLAIMING ADVERSELY TO AGRICULTURISTS MAY BE CONFINED TO ORIGINAL LOCATIONS.

Commissioner Drummond to Register and Receiver, Sacramento, California, April 15, 1873.

The papers transmitted with the Register's letter of October 15, 1872, in the case of John C. Ham, pre-emption claimant, *vs.* Louis Ludekins, R. K. McCoy and others, mineral applicants and affiants, have been examined.

November 17, 1871, was the day set for a hearing in the case, when all parties were present in person and by counsel.

The testimony offered at this hearing is, in some respects, conflicting and unsatisfactory. However, it appears that the mineral applicant has made a blind drain or tunnel, sunk shafts and run drifts at considerable expense, and obtained good prospects on his claim. In his testimony (page 32) he states that "by taking a legal subdivision, he included in his application land that was not embraced in his original location, and that he never claimed as mineral before."

The act of Congress, approved May 10, 1872, provides in the tenth section thereof that "where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed land." Mr. Ludekins will therefore be allowed to proceed with his application, embracing therein only so much land as is included in the original locations, made in accordance with the local rules and customs of miners, in the mining district wherein the claim is situated.

The remaining portion of the land embraced in the pre-emption claim of John C. Ham, is held to be agricultural in character, and will be dealt with accordingly.

Affirmed by Secretary Delano, November 19, 1873.

ERROR IN SURVEY.

Commissioner Drummond to Josiah Dart, Boulder, Colorado, April 17, 1873.

Where any material error occurs in the survey of a mining claim, so as to mislead parties who may have a right to file adversely, or not to apprise them of the exact boundaries, extent, nature and location of the claim, the applicant should commence *de novo*, by filing with the local land officers a plat and field notes, "showing accurately the boundaries of the claim," and publish a notice accurately describing the claim, for the patent when issued must conform to and agree with the description as given in the plat and field notes.

BORAX DEPOSITS.

Commissioner Drummond to Register and Receiver, Los Angeles, Cal., April 18, 1873.

Lands containing valuable deposits of borax cannot be entered under the agricultural laws of Congress.

Such lands may be entered, however, under the act of July 9, 1870, and the act of May 10, 1872, upon full compliance with the law and instructions; both of these laws providing for the patenting of lands claimed and located for "valuable deposits."

The proceedings required will be the same as are required in case of applications for patents for placer mines.

WAR EAGLE MINE.

Adverse claim was rejected because not properly made out. A re-survey of the surface-ground embraced in the application was ordered.

Commissioner Drummond to Register and Receiver, Salt Lake City, Utah, May 1, 1873.

The papers transmitted with your letter of the eighteenth of February last, in case of the application of Moses Hirschman and William Ottenheimer for patent for fifteen hundred linear feet of the War Eagle mine, American Fork mining district, Utah, have been examined.

On the fourteenth of November, 1872, Moses Hirschman and William Ottenheimer filed in your office an application for patent for 1,500 linear feet of the War Eagle mine, the locus and boundaries thereof being fully set forth in the notices and diagrams posted upon the claim and in the office of the Register.

Notice of intention to apply for a patent was published for the full period of time required by law, in the *Utah Mining Journal.*

The abstract of title on file with the case shows that the applicants for patent have the record title to 1,500 linear feet of said mine, by purchase from the original locators and their grantees.

It appears that a greater width of surface ground is embraced in said application for patent than the local law allows. If this be true, the width of the claim must be diminished to conform to the local law before entry.

The applicants also filed proof of citizenship, and proof of compliance with the law and instructions of this office. On the eleventh of January, 1873, A. H. Huyett filed in your office an adverse claim to said application. This adverse claim is informal, and insufficient to suspend proceedings upon said application for patent, for the following reasons:

Said adverse claim is not made out in the form prescribed by the act of May 10, 1872, and the instructions of this office thereunder.

The seventh section of the mining act of May 10, 1872, declares "that where an adverse claim shall be filed during the period of publication, it shall be upon the oath of the person or persons making the same, and shall show the nature, boundaries and extent of such adverse claim," etc.

The instructions of this office contained in circular of June 10, 1872, paragraph forty-nine, require that, "in order that the 'boundaries' and 'extent' of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his claim and the relative situation, or position, with the one against which he claims, so that the extent of the conflict may be the better understood. This plat must be made from an actual survey by a United States deputy surveyor, who will officially certify thereon to its correctness, and in addition there must be attached to such plat of survey, a certificate, or sworn statement, by the surveyor as to the approximate value of the labor performed or improvements made upon the claim of the adverse party," etc.

The record does not show that any survey was made of the premises claimed adversely.

A diagram or plat was filed which it appears was not "made from an actual survey by a United States deputy" or other surveyor. There is no certificate or sworn statement attached to said plat or diagram signed by a deputy or other surveyor as to the correctness thereof.

There is no "certificate or sworn statement by the surveyor as to the approximate value of the labor performed, or improvements made upon the claim of the adverse party," either attached to said plat, or on file with the case.

In short, there is nothing in the record to show that the adverse claimant has complied with the law and instructions, requiring him to have an actual survey of the premises made.

To entitle parties to have their adverse claims considered, they must comply fully with the law and instructions, as set forth in circular of June 10, 1872.

Mr. Huyett filed copies of deeds from John T. Lynch, *et al.*, which show that the grantees conveyed by quit-claim deeds to Mr. Huyett, whatever right, title, or interest they may have had in the Crusade mine, but no abstract of title is on file showing when the Crusade mine was located, the number of locators, the extent of such location, or that said Lynch *et al.* had any interest in the mine whatever.

The adverse claimant having failed to comply with the law and regulations, requiring him to show, under oath, the nature, extent, and boundaries of his adverse claim, and, therefore, having failed to make out a case showing a formal conflict with the claim of Hirschman and Ottenheimer, the law does not authorize a suspension of proceedings.

Where parties applying for patents for mining claims strictly comply with the law and instructions, this office is not authorized to suspend proceedings upon their said applications, at the instance of parties who comply with neither the law nor instructions.

The application of Messrs. Hirschman and Ottenheimer will therefore be taken up in its regular order, and disposed of as though no attempt had been made to file an adverse claim.

[NOTE.—May 13, 1873, the Surveyor-general of Utah, at Salt Lake City, was directed by telegram to "make new plat and field notes of War Eagle mine, in conformity with decision sent Register and Receiver the first instant."]

PROOF WHERE THERE ARE NO LOCAL DISTRICT LAWS.

Acting Commissioner Curtis to Hoyt, Sears & McKee, San Francisco, California, May 16, 1873.

In the absence of local district laws, applicants are required to show compliance with the mining acts of Congress in force at the date of their locations.

PLACER CLAIMS.

Tenth section, act of May 10, 1872, (Section 2331 R. S.) construed.

Acting Commissioner Curtis to Surveyor-General Blaine, Helena, Montana, May 19, 1873.

The construction given by this office to the tenth section of the mining act of May 10, 1872, is transmitted for your guidance.

Said section declares that "where said placer claims shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims hereafter located, shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys. * * * But where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands," etc.

From the foregoing, it will be seen that placer mining claims located after May 10, 1872, must conform as nearly as practicable with the public surveys. In other words, the location of a placer mine upon surveyed land, made after May 10, 1872, should embrace legal subdivisions of the public lands, where the same can be done without interfering with the rights of other *bona fide* mineral, agricultural, or other claimants in the same tract.

Where placer mines are situate upon unsurveyed land, or where, by reason of some other *bona fide* claimant, a legal subdivision of surveyed land cannot be embraced in an application for patent, a survey must be made of the premises for which a patent is sought, in accordance with circular instructions of June 10, 1872.

MOUNTAIN TIGER, ZELLA, AND ROCKWELL LODES.

One adverse claim was rejected because filed against three applications. Another rejected because no interest was shown. Minority of adverse claimant considered.

Acting Commissioner Curtis to Register and Receiver, Salt Lake City, Utah, June 9, 1873.

This office has examined the papers in case of the application of Norris W. Mundy and Joseph R. Walker, for patent for the Mountain

Tiger lode; the application of J. R. Walker, for patent for the Zella lode; the application for patent for the Rockwell lode, made by J. R. Walker.

Two of said applications for patents were filed in your office on the fifth March, 1873, to wit, for the Mountain Tiger lode, and the Rockwell lode.

The application for patent for the Zella lode was filed in your office on the eleventh March, 1873. The applicants for patent have shown a strict compliance with the law and instructions in each case.

On the third May, 1873, a protest was filed in your office against said applications for patents, which protest is sworn to by Thomas Davis, as attorney for William W. Daly, Charles Gippert, H. S. Haines and Edward Bell; attached to said protest is a diagram made by Thomas Davis, who, it appears, is not only attorney for said protestants, but also Deputy Mineral Surveyor. This protest is informal, and insufficient to warrant this office in suspending proceedings upon said applications, and for the following reasons:

It is contrary to the spirit and letter of the law and the practice of this office to permit one person, or association of persons, to file one protest against several applications for patents for separate and distinct lodes. In the cases under consideration, there were three separate and distinct applications for patents for three separate and distinct lodes. Each application is an entirety, and rests upon its own merits.

As each application for patent under the mining act is for a separate and distinct portion of mineral land, parties who desire their adverse claims considered must file a separate and distinct adverse claim against each application separately.

Adverse claimants who desire to have their adverse claims considered, must strictly comply with the law and instructions, and file with the local land officers, within the time prescribed by law and in proper form, a separate and distinct adverse claim against each application which it is alleged conflicts with the premises owned by such adverse claimants.

Where applicants for patents strictly comply with the law and instructions, the adverse claimants will also be required to strictly conform to the instructions of this office and the laws of Congress.

In the cases under consideration, it is not clear how the protestants could in any way be injured, or their rights prejudiced, by the issuance of patents as applied for; as the New Era location is of much later date than that of either the Zella, Rockwell, or Mountain Tiger mines, the mining act of May 10, 1872, sec. 14, providing what the respective rights of the parties shall be where "two or more veins intersect or cross each other."

The protest of Wm. W. Daly *et al.* is not, in the opinion of this office, such an adverse claim as is contemplated by the mining act, and cannot operate as a bar to issuance of a patent, as applied for.

On the eighth April, 1873, George C. Bates, as attorney for W. C. Anderson, filed a protest against the application for patent for the Zella mine. It appears from the papers in the case, that, on the first November, 1870, James Keller, George Carleton, J. E. Dickerson, E. J. Elzy, D. E. Cameron and W. C. Anderson, located twelve hundred linear feet of the Zella lode; and that on the twenty-sixth November,

1870, W. C. Anderson sold his interest in said mine to Geo. W. Eaton and Joseph Leighton, and that the applicant for patent has the record title to the whole twelve hundred feet, by purchase.

It appears that W. C. Anderson was not of age at the date of said location, and that he is now but twenty years of age. In his said protest, he claims that his conveyance of said premises was null and void, he being a minor at the date thereof.

It appears that W. C. Anderson made this location in his own name. If he, being a minor, was doing business for himself and in his own name, as appears from the testimony, he had the right to dispose of whatever he acquired by virtue of said location.

If it was necessary for his guardian to execute the deed of conveyance to Eaton and Leighton, hereinbefore referred to, it was also necessary that his guardian should assert the adverse claim to said application for patent.

It appears that W. C. Anderson, on the second December, 1872, by his guardian, executed a deed for said two hundred feet in the Zella mine to the applicant for patent. From the foregoing, it is evident that whatever right, title, or interest W. C. Anderson may have had to the Zella lode by virtue of location, is now in the applicant for patent, and the protest asserted by him is not, in the opinion of this office, such an adverse claim as would warrant this office in suspending proceedings upon the application for patent.

HOW A VEIN LONGER THAN FIFTEEN HUNDRED FEET MAY BE LOCATED.

Acting Commissioner Curtis to Hoyt and Brothers, Helena, Montana, June 17, 1873.

There is no provision of law to prevent parties from locating other claims upon the same lode, outside of the first location made on the lode or vein.

If a lode or vein three thousand feet in length is discovered, two locations may be made, each of fifteen hundred feet thereon.

RED WARRIOR LODE.

Application for patent was rejected because of insufficient and improper notice.

Acting Commissioner Curtis to Register and Receiver, Salt Lake City, Utah, June 18, 1873.

This office has carefully examined the papers in case of the application of I. C. Bateman, for patent for the Red Warrior lode, West Mountain mining district, Utah.

The application for patent for said mine bears date October 4, 1871, and the indorsement made by the Register thereon shows that the notice of intention to apply for a patent and a diagram of the claim, were posted in his office, from the fourth October, 1871, to the eighth January, 1872.

By the affidavit of John R. Murphy and Benjamin F. Oliver, it appears that a copy of said notice and diagram was posted upon the claim, from the fifth October, 1871, to the fifth January, 1872.

By the affidavit of Frank Kenyan, it appears that the notice was published in the *Salt Lake Review*, for a period of ninety days, commencing September 9, 1871.

In the application for patent, in the notices and diagrams posted upon the claim, and in the office of the Register, and in the published notice, the claim is described as follows:

"The discovery monument of said claim is located about two miles south-east from the town of Bingham, at the head of Bingham cañon, at or near the furnace-site to the undersigned belonging. * * * From the discovery monument said claim runs N. 36° 30′ E. 600 feet and S. 36° 30′ W. 600 feet," etc.

On the twenty-ninth April, 1872, Thomas Fitch, attorney for the applicant for patent, informed this office, by letter, that the location of the mine had been given inaccurately in the application for patent, "the mines being described as in a south-easterly direction from Bingham City, whereas it should be south-westerly."

From an abstract of title, certified to by the District Recorder, it appears that I. C. Bateman, and four others, located 1200 linear feet of the Red Warrior lode, on the twenty-fourth January, 1871.

There is no record evidence on file in this office, to show that Mr. Bateman has ever purchased the rights of his co-locators, or that he has the record title to more than 240 linear feet of the Red Warrior lode.

From the foregoing, it will be seen that the proceedings in the matter of this application for patent have been very informal and irregular, and not in accordance with the law and instructions.

This application for patent was filed under the act of July 26, 1866.

Said act requires the applicant for patent to file with the Register and Receiver an application for patent, with a diagram of the premises sought to be patented, and "that upon the filing of the diagram, as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the Register of the land office shall publish a notice of the same, in a newspaper published nearest to the location of said claim, and shall also post such notice in his office, for the period of ninety days."

In the case under consideration the notice was published nearly a month prior to the date of the application, and for the same length of time before the notices and diagrams were posted on the claim and in the office of the Register, and not during the ninety days of posting notices.

The description and location of the premises as given in said notices and diagrams were very meager, and acknowledged by the attorney for the applicant to be incorrect.

The evidence submitted by the applicant shows that he has the record title to 240 linear feet only, while the application is for 1200 feet.

In view of these informalities and irregularities, this office would not be authorized to issue a patent upon said application even though it had been clear of adverse claims, and the same is accordingly rejected.

Commissioner Drummond to Register and Receiver, Salt Lake City, Utah, October 8, 1873.

On the eighteenth of June last, this office rejected the application of I. C. Bateman for patent for the Red Warrior lode, West Mountain mining district, Utah, for the following reasons, to wit:

First. On account of insufficient and erroneous description of the premises in the application for patent, the published notice, and the notices and diagrams posted upon the claim and in the office of the Register.

Second. Because the notice was not published the same ninety days that the notices and diagrams were posted; the notice having been published on the ninth of September, 1871, and for ninety days thereafter, while the notices and diagrams were posted upon the claim October 5, and in the Register's office on the fourth of October, 1871.

Third. For the reason that there was no record evidence on file to show that Mr. Bateman had the possession, or the right of possession, to 1,200 linear feet of the Red Warrior lode, the abstract of title showing that Mr. Bateman had the record title to 240 linear feet only.

On the seventh instant, Mr. Bateman made application for a rehearing of the case, and filed an abstract of title from the office of the County Recorder, which shows that the applicant has now the record title to 1,200 linear feet of said lode. It also shows that the record title to said lode was in D. E. Buel and I. C. Bateman at the date of the application for patent, and that the applicant became the sole owner of said lode on the twenty-second of August, 1872, nearly eleven months after a patent had been applied for.

Mr. Bateman also filed an affidavit in the case.

After a careful consideration of the matter, said application for a rehearing is overruled.

INDIAN TERRITORY.

Commissioner Drummond to R. H. Angwin, Sherman, Texas, June 26, 1873.

The minerals in the Indian Territory are reserved by the United States, and this office has no control whatever over the lands in said Territory.

SAN XAVIER MINE.

Application for patent was rejected because the claim was not legally located. Locations in Arizona considered.

Commissioner Drummond to Register and Receiver, Prescott, Arizona, July 10, 1873.

On the twenty-fourth March, 1873, you were directed to call upon M. B. Duffield and J. Q. Dickason, who made mineral entry No. 3, at your office, of the San Xavier mine, for proof of ownership and possession under the local rules or regulations of miners in Tucson mining district, Pima County, Arizona Territory.

With the Register's letter of May 6, 1873, was received a copy of notice of location of the San Xavier mine, duly certified under the seal of the County Recorder of Pima county. This location notice shows that five persons, M. G. Gay, Wm. Kirkland, Fritz Courtzen, Calvin Cuzinno, and John Davis, who doubtless acted in entire good faith in the matter, claimed and located 3,600 feet of this lode.

But this location was made on September 11, 1866, nearly two months after the passage of the Congressional mining enactment of July 26, 1866, the first section of which declares "that no location hereafter made shall exceed two hundred feet in length along the vein

for each locator, with an additional claim for discovery to the discoverer of the lode," etc.

There was then, on the eleventh September, 1866, no authority of law for the location of thirty-six hundred feet of a lode by five persons; twelve hundred feet being the greatest extent then subject to location by five persons, provided they were the discoverers, or one thousand feet if claimed simply as locators; and this office is accordingly unable to issue a patent upon said application as it now stands, being for three thousand feet of said San Xavier mine.

You will inform the applicants for patent, as the locators claimed the San Xavier mine as discoverers, that they will be allowed to take twelve hundred feet along the line of the lode, in which event the monuments on the westerly end of the claim would have to be moved toward the east by a United States Deputy Surveyor, and the plat and field notes amended accordingly, a resurvey of the premises not being necessary.

Should the applicants prefer, they have the option of making relocations under the act of May 10, 1872, in which case they will commence *de novo*, after filing notice of location with the proper local officer. The proceedings in that event will be the same as though no previous application for patent had been undertaken.

Should the claimants commence *de novo*, the Surveyor-general can adopt the field notes of survey already made, with the necessary amendments as to distances along the vein and corner monuments, thus saving the applicants the expense of a resurvey.

After the expiration of the sixty days period of publication, should no adverse claim be filed, you will allow the claim to be entered, issuing the usual certificate and receipts of the current number and date. The duplicate Receiver's receipt, of course, will not be issued until the one now in possession of the claimants is first delivered to the Receiver, upon proper application the purchase money already paid on the former entry (No. 3) will be refunded.

Hereafter in receiving applications for mining patents, you will be particular to ascertain from the claimants:

First. Whether they claim right of possession under the local customs or rules of miners, as the same existed in the district, prior to the adoption of general mining regulations by the Legislature of Arizona; and if so, require satisfactory proof that the claim is occupied in accordance with such customs or rules; certified copies of the regulations in force at the date of location to be transmitted with the case.

Second. Whether the application is for a claim located in pursuance of the general regulations adopted by the said Legislature (known as Chapter L of the Howell Code), and if such is the case, require satisfactory proof that the claimants have, in making their locations, complied with such regulations.

Third. If the claimants desire patent for a claim located in accordance with the act of Congress, approved July 26, 1866, you will observe that the location does not exceed two hundred feet on the course of the vein or lode for each person who is a party to such location, with two hundred additional feet for the discoverer, or three thousand feet for any association of persons; which three thousand feet can only be taken at the rate of two hundred feet to each individual comprising such association, two hundred additional feet being

allowed the discoverer. By which it will be perceived that to locate three thousand feet on any vein or lode, required not less than fourteen persons where one was the discoverer, or fifteen persons if taken without reference to the discovery claim.

Fourth. If the application is for a mine located since May 10, 1872, the maximum along a vein or lode, that can be located by one person or several persons, is fifteen hundred feet, and three hundred feet on each side of the centre of the vein at the surface is the greatest width of surface ground permitted under the mining act of May 10, 1872.

FIRE CLAY.

Commissioner Drummond to G. Billings, Salt Lake City, Utah, July 10, 1873.

Lands valuable on account of deposits of fire clay, may be patented, on compliance with the mining act of May 10, 1872.

THREE HUNDRED AND TWENTY-SEVEN ACRES OF PLACER GROUND IN A SINGLE ENTRY.

Commissioner Drummond to Register and Receiver, Fair Play, Colorado, July 10, 1873.

Parties holding the possessory right in accordance with the local laws, may make a single entry of three hundred and twenty-seven acres of placer ground upon compliance with the mining act of May 10, 1872. [See Part IV.]

MINERALS DISCOVERED AFTER AGRICULTURAL PATENT HAS ISSUED.

Commissioner Drummond to Cyrus Madden, Port Orford, Oregon, July 10, 1873.

All mineral deposits discovered upon lands after United States patent therefor has issued to a party claiming under the laws regulating the disposal of agricultural lands, pass with the patent, and this office has no further jurisdiction in the premises.

MINING CLAIM FRAUDULENTLY EMBRACED IN AN AGRICULTURAL PATENT.

Commissioner Drummond to James F. Talbott, Shady Run, California, July 17, 1873.

If you, or those for whom you inquire, had a valid mining claim under the local laws, and were engaged in mining on the land embraced in the agricultural claim of Edden Harvey at the time entry thereot was made, and that fact can be established to the satisfaction of this office, it will afford you all the aid in its power to set aside the patent, so as to enable you to acquire title to your mine.

[See Gold Hill Q. M. Co. *vs.* Ish, Part IV.]

TUNNEL OWNERS.

Commissioner Drummond to L. S. David, Grass Valley, California, August 1, 1873.

Locators of tunnels under the act of May 10, 1872, are required to use reasonable diligence in working and advancing their tunnels; otherwise such tunnel locations are treated as abandoned.

Section 4 of the mining act referred to reads as follows:

"But failure to prosecute the work on the tunnel for six months shall

be considered as an abandonment of the right to all undiscovered veins on the line of said tunnel."

There is no specified amount to be expended to retain the ownership of a tunnel location.

MINING CLAIMS IN ALASKA.

Commissioner Drummond to Gen. H. Clay Wood, Portland, Oregon, August 2, 1873.

The territory of Alaska has not yet been organized into a surveying district, and therefore no applications for patents for mining lands in that territory can be received or considered by this office.

INCORPORATED AND UNINCORPORATED ASSOCIATIONS.

Commissioner Drummond to Register and Receiver, Carson City, Nevada, September 11, 1873.

Where incorporated companies apply for patents for mining claims, you will require a copy of their certificate of incorporation, or charter, to be filed with the application for patent.

Where an association of persons unincorporated, apply for a patent, the published notice, the Register's certificate of entry, and the Receiver's receipt, should give the names of all the applicants.

DATE OF LOCATION.

Commissioner Drummond to Register and Receiver, Central City, Colorado, September 17, 1873.

The record evidence shows that the Dunkirk lode was not located until after the passage of the act of Congress of July 26, 1866, and record evidence cannot be disregarded in cases of this kind.

Where parties claim under a location made under the mining rules, their title cannot have an inception prior to date of a notice of location in which their names or those of their grantors appear.

The monuments will have to be removed from their present position by a United States deputy surveyor, and placed at the four corners of the one thousand feet claimed, and the plat and field notes amended accordingly.

The applicant has failed to file any proof of improvements.

PLACER CLAIMS INCLUDING FIVE-ACRE LOTS.

Commissioner Drummond to Register and Receiver, Sacramento, California, October 23, 1873.

It is observed that said entry (of a placer mine) embraces two five-acre lots.

The smallest legal subdivision of the public lands is a ten-acre tract, and it will therefore be necessary for Mr. Immer to have a survey made of the premises for which he has made application for patent.

SUIT DECIDED IN FAVOR OF APPLICANT.

Commissioner Drummond to H. B. Morse, Central City, Colorado, October 30, 1873.

If, as you state, the suit commenced against the applicant for patent, has been decided in favor of the applicant, a copy of the decree of the court in the case should be filed with the Register and Receiver, with a

certificate of the clerk of the court that no suit is pending against said applicant brought by the adverse claimant, bringing into question the title to said property.

COPIES OF CONVEYANCES OR AN ABSTRACT OF TITLE AND COPY OF LOCATION SHOULD BE FILED WITH AN ADVERSE CLAIM.

Commissioner Drummond to Hempstead & Kirkpatrick, Salt Lake City, Utah, October 31, 1873.

An adverse claimant to an application for patent for a mining claim, should file with the other papers which go to make up his adverse claim, either an abstract of title to the premises claimed by him, together with a copy of the original notice of location, or certified copies of the original notice of location, and the deeds of conveyance tracing the right of possession from the original locators to such adverse claimant.

Where an abstract of title is furnished, instead of copies of the original deeds, such abstract should be full and complete, and properly attested by the seal of the Recorder.

IRON CLAIMS.

Commissioner Drummond to Surveyor-General Reed, Cheyenne, Wyoming, November 18, 1873.

Lands containing valuable deposits of iron can only be entered and patented under the mining acts of Congress. The proceedings to obtain patent for a vein or lode of quartz, or other rock in place, bearing iron, are the same as those required in cases of applications for patents for lodes or veins bearing gold, silver, copper, etc.

If the claim was located prior to May 10, 1872, the size of the claim, both as regards the length and width, is regulated by the local laws, customs, and rules. If the claim was discovered since May 10, 1872, the size of the claim is limited by the act bearing date the tenth May, 1872.

CERTIFICATE OF IMPROVEMENTS.

Acting Commissioner Curtis to Register and Receiver, Fairplay, Colorado, November 20, 1873.

Where a placer claim is situate upon surveyed lands, and conforms to legal subdivisions thereof, no survey or plat is required of the claim, and proof of improvements may consist of affidavits of parties who are familiar with the claim, and who can testify understandingly in regard to the character and amount of improvements.

LEVIATHAN *vs.* SEGREGATED BELCHER.

Application for patent was rejected because the survey did not define the boundaries of the claim, and the abstract of title was defective.

Commissioner Drummond to Register and Receiver, Carson City, Nevada, January 6, 1874.

On the thirty-first ultimo, the attorney for the Segregated Belcher Mining Company filed in this office a "request that the Surveyor-general of the State of Nevada be instructed to correct the plat and field notes of his survey of the mining premises claimed by the applicant, and for which a patent is requested, in order that said plat and

field notes may be intelligent and in conformity to law and the regulations of the land office, and correctly and accurately show the boundaries of said claim." This request cannot be granted. Either the Segregated Belcher Mining Company have complied with the law in the matter of filing with their application for patent "a plat and field notes of the claim or claims in common, made by or under the direction of the United States Surveyor-general, showing accurately the boundaries of the claim," and no corrections are necessary, or they have failed to comply with the law by filing with their application "a plat and field notes of the claim * * * * showing accurately the boundaries of the claim." That said company failed to comply with the law, and did not file a survey "showing accurately the boundaries of the claim," seems to be acknowledged by both the applicant for patent and the adverse claimant, and in my opinion no such plat or field notes were filed as the law requires. This matter, however, will be considered more fully in deciding upon the merits of the case. The facts in this case are as follows:

On the nineteenth April, 1873, the Segregated Belcher Mining Company filed in your office an application for patent for "one hundred and sixty linear feet along the course of the vein or lode, with all its dips, angles and variations, and in extent laterally, as shown by the amended diagram."

In the notice posted upon the claim and the Register's office, the claim is described as "embracing one hundred and sixty feet of the Comstock lode, with two hundred feet on each side of said vein or lode for the convenient working of the same."

In the field notes of survey accompanying said application, the claim for which a patent is sought is described as follows, viz:

"Lying between two end lines, one of which, being the north line, begins at Post No. 1 * * and runs from center of said Post No. 1 along the south line of the Belcher company's claim N. 62° W., passing through the center of Post No. 3 at 300 feet, and S. 62° E., passing through Post No. 2 at $267\frac{7}{10}$ feet, and the other of which, being the south line, begins at center of Post No. 4, which bears from Post No. 1 S. 28° W. 160 feet, and runs from said Post No. 4 N. 62° W., passing through the center of Post No. 6 at 300 feet, and 12 inches south of the north side of the south compartment of the Segregated Belcher shaft at about 570 feet, and S. 62° E., passing through the center of Post No. 5 at $285\frac{2}{10}$ feet.

"The area of the claim is estimated at two acres."

In neither the plat nor field notes are the exterior boundaries of the claim shown, nor their length stated in full.

The only evidence of publication in this case is the certificate of the Register that the notice accompanying his certificate was published in the Gold Hill *Daily News*, for the period of sixty days.

The description of said claim, in the printed notice, agrees with that given in the application.

The sixth section of the mining act of May 10, 1872, declares the manner in which government title may be obtained to mining claims, and requires the party to file with his application "a plat and field notes of the claim or claims in common, made by or under the direction of the United States Surveyor-general, showing accurately the

boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground."

In case of this application, no plat or field notes have been filed, "showing accurately the boundaries of the claim," and no evidence has been furnished that the exterior boundaries of the claim have been "distinctly marked by monuments on the ground."

It is true that six posts or monuments are referred to in the description of the premises, in the plat and field notes and published notice, but in no place is it asserted that Posts Nos. 2, 3, 5 and 6 are placed at the four corners of the claim. On the contrary, the field notes state that the northern end line passes through Posts Nos. 2 and 3, and that the southern end line passes through Posts Nos. 5 and 6. The field notes describe the southern end line as not only "passing through the centre of Post No. 6 at 300 feet," but extending to a point "twelve inches south of the north side of the south compartment of the Segregated Belcher shaft at about 570 feet" from said Post No. 6.

The end lines of the claim, as represented upon the plat, are at least 1,500 feet in length, but the full width of the claim is not shown.

To patent the claim as presented, would be equivalent to issuing a patent for 160 feet of the Comstock lode, together with a strip of of surface ground of indefinite width, having neither an eastern nor a western limit.

The length of the claim along the line of the lode being 160 feet, the width could not exceed 544½ feet, to embrace an area of two acres.

By the abstract of title on file, from the office of the County Recorder of Storey County, Nevada, it appears that H. Comstock, E. Belcher, J. M. Baldwin, and L. B. Abernathie, on the twenty-fourth May, 1859, located 1,300 linear feet of said lode. It also appears that many different parties became the owners of portions of said lode, by purchase from the original locators and their grantees, and that on the first September, 1861, the southerly 160 feet of said location were segregated and divided from the remainder of the claim, and set off to Robert Apple and D. Schneider. It does not appear, however, that the following named parties, having record title to a portion of said claim, joined in the deed to Apple and Schneider, or that they have ever conveyed the interest which they held in said premises, viz: Albert Fonda, John Gray, James N. Olney, William R. McCall, William Ward Battles, August Compte, E. C. Brooks, F. F. Baws, Michael McDermott, R. C. Wilcox, Stew and Meline, Charles W. Hastings, Sarah R. Palmer, Mrs. R. G. Knox, J. A. Osborne, and Charles Short.

On the nineteenth July, 1865, the Segregated Belcher company purchased from the grantees of Apple and Schneider, said 160 feet.

By the foregoing, it will be seen that the Segregated Belcher Mining Company have neither complied with the law nor instructions of this office, and no patent can issue upon said application, for the following reasons, viz:

Said company did not file with its application for patent "a plat and field notes of the claim * * * made by or under the direction of the United States Surveyor-general, showing accurately the boundaries of the claim." Neither did the published notice, nor the plats posted upon the claim and in the Register's office, show "accurately the boundaries of the claim."

Second. The abstract of title from the office of the County Recorder of Storey County, Nevada, does not show that all of the parties having record title to the premises originally located by E. Belcher *et al.*, have conveyed their respective interests to Apple and Schneider, or their grantees, from whom the Segregated Belcher Mining Company purchased the 160 feet in question.

Said application for patent is accordingly rejected.

On the eighteenth June, 1873, and before the expiration of the sixty days notice by publication, the Leviathan Mining Company, by its president, James J. Robbins, filed an adverse claim against said application for patent, and commenced suit against said Segregated Belcher Mining Company, on the fifteenth July, 1873, in the Circuit Court of the United States for the Ninth Judicial District in and for the district of California.

On the same day that said adverse claim was filed, the Register informed all parties in interest of the filing thereof, and informed the adverse claimants that they would be required to commence suit in accordance with the law, or their adverse claim would be considered waived.

On the seventeenth July, 1873, the Segregated Belcher Mining Company filed with you an appeal from the action of the Register and Receiver, and the order made by them on the eighteenth day of June, allowing said adverse claim to be filed, and staying all proceedings upon said application until the matters in controversy should be settled in a court of competent jurisdiction.

The seventh section of the mining act of May 10, 1872, declares: "That where an adverse claim shall be filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries and extent of such adverse claim."

Said adverse claimant is an incorporated company, as appears by a copy of the certificate of incorporation. It also appears that James J. Robbins was the president of said Leviathan Mining Company at the date of filing said adverse claim, and that he was duly authorized in behalf of said company to file an adverse claim against said application.

In his sworn statement, said James J. Robbins alleges that the Leviathan Mining Company is the owner and in the actual possession of the Leviathan lode; that said Leviathan company and its grantors have occupied and improved the premises claimed by them in accordance with the mining rules, customs, and regulations in force in the mining district where such claim is situate. That more than five hundred dollars have been expended upon the premises claimed by the Leviathan company in actual labor and improvements. That the premises described in said application for patent conflict with and embrace a part of the premises claimed by the Leviathan company; and that the ledge or lode claimed by the Segregated Belcher Mining Company "is not at any point upon the surface within seven hundred (700) feet of the point of commencement of the said survey of applicant, as indicated by posts numbers one and four in said plat and field notes."

By an abstract of title from the office of the county recorder of Storey county, Nevada, it appears that Isaac Watson and nine others located two thousand linear feet of the Leviathan lode, May 19, 1863.

It appears from said abstract that the Leviathan company purchased said premises from W. H. Patterson, but it does not appear that Theo. S. Read and W. J. Albian, two of the original locators, ever conveyed the interest which they acquired by virtue of location to said Patterson, his grantors, or any other persons.

The adverse claimants also filed a plat and the field notes of a survey of said Leviathan lode, made by Hugo Hochholger, U. S. deputy-surveyor, which show the relative positions of the two claims.

Indorsed upon said plat and field notes of survey is the certificate of said deputy-surveyor that the amount of improvements upon said Leviathan lode exceeds five hundred dollars, and that the plat and field notes are correct.

This plat shows that the southerly end of the Leviathan claim is crossed at nearly right angles by the survey of the Belcher claim, although the Leviathan survey lies easterly of posts numbers two and five, hereinbefore referred to. In short, the Leviathan Mining Company have asserted such an adverse claim as is contemplated by the mining act of May 10, 1872, and it would have been necessary to suspend proceedings upon said application for patent until the controversy had been "settled or decided by a court of competent jurisdiction or the adverse claim waived," had the Segregated Belcher Mining Company complied with the law and instructions in the matter of making out their application for patent, which they have not.

Should the Segregated Belcher Mining Company desire to commence *de novo*, they will of course, be permitted to do so, upon their full compliance with the law and instructions.

EXPENDITURE THAT SHOULD BE SHOWN UPON THE PLAT AND FIELD-NOTES OF SURVEY.

Where a mill-site is applied for, in connection with a lode claim, the $500 expenditure is not required to be upon the mill-site, but upon the lode claim only.

The $500 expenditure must be shown upon the plat and field-notes of each of the four classes of claims contemplated by the mining statutes.

Commissioner Drummond to Surveyor-general Lessig, Denver, Colorado, March 10, 1874.

The 15th section of the mining act of May 10, 1872, provides "that where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notices as are applicable under this act to veins or lodes."

If, therefore, a party who has improved, held and worked his mine in accordance with the local law and Congressional enactments, and who has expended in actual labor and improvements thereon an amount of not less than five hundred dollars, desires to include in his application for patent therefor "non-mineral land not contiguous to the vein or lode which is used or occupied by the proprietor of such vein or lode for mining or milling purposes," it will only be necessary for such applicant to furnish evidence that five hundred dollars have been expended upon the lode claim.

In other words, where a party applies for a lode claim and mill-site in the same application, the act does not require that five hundred dollars shall have been expended upon the mill-site, but upon the lode claim only.

The mining act of May 10, 1872, provides for patenting, 1st, lode claims; 2d, placer claims; 3d, mill-sites, and 4th, lode claims and mill-sites; and the plat and field notes of survey of either of these classes of claims should show that an amount of not less than five hundred dollars has been expended upon the claim in actual labor and improvements.*

BELLWETHER LODE.

A protest to be considered must be sworn to before an officer authorized to administer oaths in the land district where the claim is situated.

Contestants, notwithstanding default in making protest, may be considered as parties to the contest for the purpose of showing from the record that the claimants have not complied wtth the requirements of the law.

The publication of notices in mining cases may be in newspapers published weekly, but must cover the full period of sixty days. A publication in a weekly paper for nine successive weeks, (nine insertions), is not a publication "for the period of sixty days."

Secretary Delano to Commissioner Drummond, April 30, 1874.

I have considered the appeal of John H. McMurdy *et al.*, adverse claimants, from your decision of October 29, 1873, in the matter of the application of Eli S. Streeter and Thomas McCunniff for patent to six hundred linear feet of the Bellwether lode, Central City Land District, Colorado.

You dismissed the adverse claim of McMurdy *et al.* on the ground that the protest filed was not sworn to before an officer authorized to administer oaths in the land district where the claim is situated, following herein the rule laid down in the recent case of the Dardanelles Mining Company *vs.* The California Silver Mining Company, decided by the Department October 28, 1873. Your decision is to this extent correct, and is hereby affirmed.

It is asserted, however, upon appeal, that the claimants have not complied with the requirements of the act of May 10, 1872, in the prosecution of their claim, and that, notwithstanding their (contestants') default, they are entitled to show such non-compliance, and thereby defeat the claim of the applicants for a patent under the present proceedings.

The right here contended for is expressly given by the last clause of the sixth section of the act of May 10, 1872, (under which act all the proceedings in this case were instituted), which is in the following words, viz: "And thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with this act."

The contestants are therefore to be considered as parties to the contest for the purpose of showing from the record that the claimants have not complied with the requirements of the act.

For the purposes of this case it is only necessary to notice one of the objections raised by the appellants, viz., that the publication of the

*It is doubtful if an expenditure of $500 must be shown upon the plat of a mill-site claim.—EDITOR.

notice of application was not made in compliance with the terms of the act.

The publication was made in a weekly paper, "*The Colorado Miner*," for nine successive weeks, nine insertions, the first being in the issue dated February 6, 1873, and the last in the issue dated April 3, 1873. Was this a publication "for the period of sixty days?" I think not. The language of the act is plain. "The register of the land office * * * * shall publish a notice that such application has been made *for the period of sixty days* in a newspaper to be by him designated," etc. It does not direct a publication once a week for eight weeks, or two months, but for a certain period, viz., sixty days. The publication may undoubtedly be made in a paper published weekly, but it must cover the full period named. The time elapsing between the first and the last insertions must include the full period of sixty days. From the 6th of February, 1873, to the 3d day of April, 1873, including the first day of publication (which I think should be excluded), there were only fifty-seven days, viz., in February twenty-three, in March thirty-one, and in April three—total, fifty-seven. This was clearly not a publication "for the period of sixty days."

The statute having in this material requirement been disregarded, the publication as made, and all subsequent proceedings founded upon it, were irregular and invalid.

IRON CLAIMS.

Acting Commissioner Curtis to Andrew I. Stewart, Salt Lake City, Utah, May 2, 1874.

Iron lands may be patented under the mining acts of Congress. Where the iron is found in lodes or veins, or in rock in place, the proceedings to obtain patent are the same as those prescribed in the mining act of May 10, 1872, in case of vein or lode claims.

Where the iron is not found in rock in place, the proceedings to obtain Government title are the same as those prescribed by said act in case of placer claims.

CASCADE LODE.

Application for patent rejected, because—

1. The notice was published without the knowledge of the register.
2. The notice was not published in a newspaper designated as published nearest the claim.
3. The record title was found defective; and
4. A previous application had been made for the same premises, which was withdrawn pending a suit in court commenced by the adverse claimant.

Acting Commissioner Curtis to Register and Receiver, Central City, Colorado, May 7, 1874.

I have carefully examined the papers in the case of the application of J. B. Lewis for patent for fourteen hundred linear feet of the Cascade lode, Cascade mining district, Clear Creek county, Colorado.

This application was filed in the local office on the 20th March, 1873, and the notice published in the *Daily Colorado Herald* on the same day, and thereafter for the period of sixty days.

The mining act of May 10, 1872, provides for the patenting of mining claims, and clearly sets forth the manner of proceeding to obtain Government title.

One of the conditions precedent to obtaining patent for a mining claim is, that "the *Register* of the land office * * * shall publish a notice that such application has been made for the period of sixty days in a newspaper, to be by him designated as *published nearest to said claim.*"

In the case under consideration it appears by the sworn statement of S. P. Lathrop, who was Register of the Central City land office at the date of the filing of said application, "that on the 2d day of March, 1873, during his absence from said office, John B. Lewis filed in said office an application for patent for the Cascade lode, situated in Cascade mining district, Clear Creek county, Colorado Territory; that without the knowledge and authority of affiant, the Receiver of said land office caused a notice of said application to be published in the *Colorado Herald* instead of the *Georgetown Miner*, in which, to the best of my knowledge and belief, it should have been published."

By the affidavit of Francis F. Bruné, deputy mineral surveyor for said district, it appears that the premises described in the application for patent are about four miles from Georgetown, and about twelve miles from Central City.

From the foregoing it will be seen that the notice was not published in accordance with the law, having been published *without the knowledge of the Register, and not in a paper published nearest the claim.*

The Register has been accustomed to publish the notices of applications for patents for mining claims situate in Cascade district, Clear Creek county, in the *Colorado Miner*, which is published near to said district and within the county, and parties owning claims in that district had a right to expect that notices of intentions to apply for patents for mines in said district would be published in the *Colorado Miner*, and not in a paper published in another county and at a much greater distance.

The application for patent describes fourteen hundred feet of the Cascade lode. The abstract of title shows that the original locators of said lode conveyed their respective interests to James G. Thorn.

It appears that there is a defect in the deed from Thorn to Moses M. Fuga, the grantor of the applicant for patent, and the original deed from said Thorn to J. Warren Brown—on file with the case—conveys to the said Brown 1,500 feet of the said Cascade lode, "being the same property claimed fraudulently by M. M. Fuga and his grantees, a deed of which property the said Fuga obtained from the said first party (James G. Thorn) by fraud, which said deed was never acknowledged by the said party of the first part."

In addition to all these irregularities, it appears by the papers in the case that Mr. Lewis made application for patent for his claim on said Cascade lode on the 8th of April, 1872, and that an adverse claim was filed against the same by J. Warren Brown within the time prescribed by law, and suit commenced thereon, and that while said suit was pending Mr. Lewis withdrew said application, and commenced a new application as hereinbefore recited.

In view of these facts Mr. Lewis could not receive a patent upon his present application, even though no adverse claim had been asserted.

The application of Mr. Lewis is hereby rejected.

FAIRVIEW MINE.

Placer mine *vs.* town-site patent.

Commissioner S. S. Burdett to Register and Receiver, Stockton, Cal., June 16, 1874.

This application of Charles E. Lang and Alonzo Colby, for patent for the Fairview mine, was filed in the local office on the 20th February, 1874.

On the 21st April, 1874, S. S. Turner filed a protest against said application for patent.

In his sworn statement Mr. Turner alleges that he is the owner of a certain piece or parcel of land situate within the exterior boundaries of the town-site of Sonora, Cal., designated upon the official plat of said city as block 29, lot 7.

Mr. Turner also filed a copy of a deed from the trustees of the city of Sonora to Samuel S. Turner for lot 7, block 29, the deed expressly stating "that no title shall be hereby acquired to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws of Congress." This deed is dated April 22, 1874, and was filed in the local office April 23, 1874.

The protestant filed a plat showing the relative situation of said mine and said lot 7, block 29.

Mr. Turner alleges under oath that the premises described in the application for patent are not "the same land as the claim which was originally located in March, A. D. 1871, but a different claim."

It appears from the records of this Office that patent issued for the town-site of Sonora, March 20, 1874, in which a clause was inserted expressly providing "that no title shall be hereby acquired to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws of Congress."

From the foregoing it will be seen that the United States did not convey with said town-site patent any mine of gold or silver, but on the contrary expressly excepted from such grant *all mines and valid mining claims or possessions.*

The same excepting clause is found in the deed from the trustees of said city to the protestant for said lot 7, block 29; and the protest filed by Mr. Turner cannot operate as a bar to the issuance of a patent to Messrs. Lang and Colby.

When patent issues for said mining claim a clause will be inserted therein "excepting and excluding, however, from these presents, all town property rights upon the surface, and there are hereby expressly excepted and excluded from the same all houses, buildings, structures, lots, blocks, streets, alleys, or other municipal improvements on the surface of the above-described premises, not belonging to the grantees herein, and all rights necessary or proper to the occupation, possession, and enjoyment of the same."

NORTHERN LIGHT AND FAIRVIEW MINES.

Publication of notice in mining applications must be made in only one newspaper for the period of sixty days.

Commissioner Burdett to Register and Receiver, Salt Lake City, Utah, June 16, 1874.

The notices in case of the applications for patents for the Northern

Light and Fairview mines, Utah, were published in the *Endowment* newspaper one day, in the *Evening Journal* forty-one days, the Bingham Cañon *Pioneer* seventeen days, and in the Salt Lake *Herald* fifteen days, for the reason that the three first-named newspapers suspended after the said notices had been published therein for the respective periods of time named.

This cannot be considered a publication within the meaning of the mining act. The notice should be published for the period of time required by law in one newspaper.

JEFFERSON *vs.* PENNSYLVANIA.

Commissioner Burdett to Register and Receiver, Marysville, California, July 21, 1874.

When papers have once been filed with you, they become a part of the record, and can neither be withdrawn nor returned, but must be transmitted to this Office with the other papers in the case.

If a party files an adverse claim to an application for patent and for any reason concludes not to prosecute the same, he may file with you a written statement of the fact that he does not intend to longer contest the right of the applicant, in which event all the papers filed by the applicant and the adverse claimant will be transmitted to this Office when the entry has been made.

SEVEN-THIRTY LODE.

The examination of an application for patent under the mining laws should proceed beyond the papers filed in the case and into those general records of the General Land Office which evidence the final disposition made of the public domain; and if it be found that any part of the premises applied for have been previously disposed of, an express exception thereof should be inserted in the subsequent patent.

Commissioner Burdett to Britton, Gray & Drummond, Washington, D. C., August 17, 1874.

On the 4th instant a decision was rendered by this office in the matter of the application of Samuel Watson *et al.*, for patent for the Seven-Thirty Lode, Colorado, in which occurs the following recital: That "it is also shown that the Hercules Lode does not follow the surface ground patented to said company throughout its entire length, but that it leaves the surface ground near the southwesterly end of the survey of the surface ground, and underlies a portion of survey No. 136."

It is then held as follows: "The United States having conveyed to said company the entire surface ground embraced by said survey No. 112, and 3,000 linear feet of the Hercules lode, in accordance with the provisions of the mining act of July 26, 1866, a clause will be inserted in the patent to said Watson *et al.*, for said claim when issued, excepting from the conveyance the surface ground and lode conveyed to said International Mining and Exchange Company by said patent, dated September 3, 1872."

On the 7th instant you filed in this office a "protest" against said decision, quoting, and particularly objecting to the following sentences of the before-mentioned recital, viz: "It is also shown that the Hercules lode does not follow the surface ground patented to said company throughout its entire length, but that it leaves the surface ground near the southwesterly end of the survey of the surface ground, and underlies a portion of survey No. 136."

Your protest is also understood by its general terms to be directed against the proposed insertion in the patent to the Seventy-Thirty lode of a clause excepting from the conveyance the surface ground and lode conveyed to the said company by patent dated September 3, 1872. * * *

The decision of the 4th instant, against which your protest is made, embraces as findings or official conclusions in the nature of a final judgment of the office—

1st. That the applicants have shown compliance with the law, and are entitled to receive a patent; and

2d. That such patent shall issue, but with an excepting clause as to certain surface ground and lode theretofore conveyed by patent to other parties.

Nothing more than this, which is so in the nature of an adjudication as that it might be held restrictive of or so definitive of rights as to be binding on either parties or privies, is found or intended to be embraced by the recitals of said letter.

The particular recital embraced and quoted in your protest is in the nature of inducement or introduction only to the specific findings that *exception shall be made in the patent.*

The real question involved, therefore, is, Is it the duty of this Office, upon the record as it stands, to insert or to omit the exception complained of, and as preliminary thereto what proofs, proceedings, and records, should be considered in reaching a conclusion upon that question?

It is conceded that a protest has no such office to perform as that, upon its being filed, any right of intervention accrues save only in the nature of a challenge of the applicant's own showing, or that through its instrumentality any trial of unascertained rights may be authorized.

It is held that, for ascertaining the proper and necessary recitals of a patent in a given case, the applicant is found by the terms and disclosures of such filings as conformably with the law he rests his right to enter and purchase upon; and that, for the further ascertainment and protection of rights, and as a duty on the part of the United States, it is held that the examination of this office should, whether protest be filed or not, proceed beyond the papers filed by the applicant, and into those general records of the office which evidence the final disposition made of the public domain; and if upon examination it is found that any part of the premises applied for have been previously disposed of, that express exception thereof should be inserted in the subsequent patent.

Upon this theory the examination proceeded in this case.

It is found among other things, upon inspection of the official plat of survey furnished and filed by the applicants for patent for the Seven-Thirty Lode, as well as the diagram posted with the notice on the claim, that said claim, designated lot No. 136, and known as the Seven-Thirty Lode, does, at its southwesterly end, embrace a portion of the *surface ground* embraced by said survey No. 112, patented to the International Mining and Exchange Company with their claim on the Hercules Lode, and that it also covers a part of the *Hercules Lode.*

By reference to the record of patents in this office, it is found that a patent issued on the 3d day of September, 1872, to the International Mining and Exchange Company, for the premises embraced by said

survey No. 112, and for three thousand linear feet of the said Hercules Lode.

A comparison of said patent and the plat of said survey No. 112, incorporated into and made a part of said patent, with the plat of survey No. 136, confirms the admitted interference of survey No. 136 with the surface-ground and lode patented to said company with survey No. 112.

In other words, the Seven-Thirty applicants ask the United States to sell and convey to them, as a portion of the public domain, a tract of land and certain premises already sold and conveyed. This I decline to do, and hold that in such cases it is the duty of this office to protect the prior patentee by inserting in the subsequent patent such apt words as shall clearly except every right already conveyed.

What is granted by the United States to the patentee of a vein or lode claim may be thus stated. A patent granted for a mining claim under the act of July 26, 1866, by the express provision of the act, conveys to the grantee therein named the *surface ground* embraced within the exterior boundaries of the survey, and the *particular lode* named in the patent for the number of feet patented along the course thereof, with all its dips, angles, and variations, although it may depart from the surface ground described in the survey, and enter the land adjoining.

Where the application for patent was pending under the act of 1866, on the 10th day of May, 1872, none of the rights which the applicant had acquired by virtue of compliance with said act of 1866 were affected or impaired in any way, and patents issued upon applications of this class convey the same rights which were conveyed under the act of 1866, together with all other veins or lodes, the tops or apexes of which lie inside the exterior boundaries of the surface ground patented, to the extent and in the manner provided by the third section of the act of May 10, 1872.

This question is fully discussed in two opinions rendered by this Office in regard to this same Hercules lode, of date December 26, 1872, one addressed to Hon. J. B. Belford, and the other to L. G. Calkins, Esq.

Conformably with those views, it has been the constant and uniform practice and custom of this office in the recitations of its mineral patents to expressly convey the lode or vein named in the patent to the number of feet named, as well as the surface ground described in the patent, and it is deemed proper and just in forming an exception to make it equally broad.

That you may be fully informed upon the matter, it is now decided that the form of exception to be inserted in the patent to Samuel Watson *et al.*, when the same shall issue, will be in the following words, viz.: "excepting from this conveyance the surface ground and lode conveyed to the said International Mining and Exchange Company by said patent, dated September 3, A. D. 1872."

Secretary Delano to Commissioner Burdett, March 4, 1875.

The survey of the Seven-Thirty claim shows a partial conflict as to surface ground with the patented claim of the International Mining and Exchange Company, (Hercules lode,) and you find from the record

and the files of your Office, as a matter of fact, that the said Hercules lode leaves the surface ground patented to said company and extends under the surface ground of the Seventy-Thirty claim. You accordingly directed that a patent issue to the claimants in conformity to their survey, with a reservation excepting that portion of the surface-ground in conflict, and excepting also the lode already patented to said International Company.

Appeal has been taken from this decision, and the exception mainly relied upon is your direction that, in the patent to be issued to the Seven-Thirty, the lode patented to the International Company shall be reserved.

The second section of the act of July 26, 1866, under which the International made its location, authorizes the patentee to follow the vein or lode, "although it may enter the land adjoining, which land adjoining shall be sold subject to this condition." This provision certainly makes it proper to recite the "condition" in the patent for the "land adjoining," whether it is absolutely necessary to make such recital or not. It may be that the law would sufficiently protect the patentee without any such recital; but I think it can do no harm to insert it, and that the Land Office may properly make the insertion whenever it is shown, by its own records, that there has been a previous patent for a mineral lode, on land adjoining that applied for.

You directed that the exception should be in these words: "Excepting from this conveyance the surface ground and lode conveyed to the said International Mining and Exchange Company by said patent, dated September 3, A. D. 1872."

It is objected to this form of expression, that it finds that the lode referred to does run under the premises of the Seven-Thirty, and that you have no right to find such a fact.

I am of opinion that the rights of all parties will be protected by inserting in the patent to the Seven-Thirty the following clause, which is hereby directed to be done, to wit; "Excepting from this conveyance the surface ground conveyed to the said International Mining and Exchange Company by its patent, dated September 3, 1872, and also excepting from this conveyance so much of the Hercules lode, if any there be, as was legally conveyed to the said International Mining and Exchange Company by its aforesaid patent."

To this extent I modify your decision.

COMPROMISE.

Commissioner Burdett to Haydon & Gilchrist, Washington, D. C., August 18, 1874.

In cases where two applications for patents under the mining acts conflict with each other, and the applicants may desire to compromise or amicably settle their disputes by each party releasing to the other a portion of the premises embraced in the respective applications, a survey will be required of that portion of each claim which may be necessary to show the compromise line agreed upon between the parties, and the exterior boundaries of each claim to be patented.

It is wholly unnecessary for this office to direct the surveyor-general to make such resurveys in cases of this kind, as he will promptly do so upon application being made to him by the parties in interest.

SILVER ORE LODE.

A lode located under the act passed by the Colorado legislature, Feb. 9, 1866, was located prior to July 26, 1866, if discovered prior thereto, and the local laws were fully complied with, notwithstanding the record thereof was not made until subsequent to the passage of the act of Congress of July 26, 1866.

Acting-Secretary W. H. Smith to Commissioner Burdett, August 26, 1874.

I have examined the case of Wm. A. Hamill, on appeal from your decision of September 14, 1873, in the matter of his application for patent to the "Silver Ore Lode," Griffith mining district, Colorado Territory, under the act of July 26, 1866.

His claim is for fourteen hundred feet of said lode, seven hundred feet upon each side of the discovery shaft, as shown by the survey accompanying the record.

You find, as a matter of fact, that the claim of Hamill's grantor was recorded in the proper recorder's office subsequently to the passage of the act of 1866, which expressly limits the quantity to be entered under future locations to two hundred feet in length along the vein to each locator, with one additional claim for discovery to the discoverer of the lode; and you held substantially that this date of record should be considered as the date of location, and that the claim should consequently be restricted to four hundred linear feet. From this decision appeal has been taken to the Department.

The proviso to the 4th section of the act of 1866 limits "locations" *thereafter* made to two hundred feet for each locator, with an additional claim for discovery. By logical and legal inference, therefore, locations *theretofore* made are not to be so limited. They are to be governed, by virtue of the preceding sections of the act, by the local laws, customs, and rules of the mining districts where the claims are situated, subject only to the general limitation to three thousand feet, in compliance with the second proviso to the 4th section. When such rules differ with the provisions of the first proviso relating to quantity, they are not "in conflict" therewith, so far as prior locations are concerned, for the limitation by the proviso refers specifically to locations *thereafter made*. Neither is the view of law here taken contrary to what may reasonably be presumed to have been the intent of Congress. The act of 1866 was the first mining statute of general application ever passed by Congress. Prior to that date, as a matter of general notoriety and history, in all the mineral regions miners held possessory rights by "locations" under local laws. These rights were always locally respected by the citizens and the courts. Congress, by the act of 1866, attempted to establish a general rule by which these local rights should be recognized by the Government, so far as not in conflict with the laws of the United States. It for this purpose recognized these local laws, customs, and usages, and with reference to the quantity of any lode to be entered, applied two limitations, viz.; a general one of all claimants to three thousand feet, and with reference to a certain *specified class of locations*, those made "*thereafter*," a further limitation to two hundred feet and an additional claim for discovery. The intent was to recognize all locations in accordance with existing law, subject to these limitations. I can see no good reason why Congress should not be presumed to have intended just what is

enacted. A claimant who had located a claim prior to this act, and had complied with the local laws, was certainly equitably entitled. Congress intended to embrace such claims; it did so by the general language of the preceding section, and it did not limit them by the first proviso of the 4th section. By what, then, are they limited? They are valid under local laws unless in conflict with the laws of the United States. They were not so in conflict prior to the act of 1866, and they are not now in conflict unless by the proviso in question. This proviso, as I have already stated, applied by intent of Congress and by the effect of the language used to future locations.

I am of opinion that locations made prior to the act of 1866, and in full compliance with local law at that date, were valid under the act for the quantity authorized by local law, subject to the general limitation to three thousand feet.

Was the Silver Ore Lode located prior to the act of 1866?

The revised statutes of the Territory of Colorado, (January 10, 1868, Chap. LXXII.,) provide, with reference to all rights of occupancy, possession, and enjoyment of public lands, that all such rights acquired after the 7th day of November, 1861, shall be ascertained, adjudged, and determined by the laws of the Territory in force at the date of such acquisition.

The first and second sections of a statute of the territorial legislature approved February 9, 1866, are in the following words, viz:

"SECTION 1. That hereafter each and every person who shall discover any mineral lode or vein of gold bearing ore, or of silver, or other valuable metals in this Territory, shall, *by virtue of such discovery*, be entitled to take, hold, and possess fourteen hundred feet, linear measure, of such lode or vein, of which the discovery shaft shall be the centre thereof; and said fourteen hundred feet, so taken, shall be known and described as the discovery claim.

"SECTION 2. All lodes or veins of gold, silver, or other valuable minerals, which may hereafter be discovered, shall be marked at the point of discovery by a substantial stake, post, or stone monument, having inscribed thereon the name of the discoverer or discoverers and the name of the lode or vein, with date of discovery; and the discoverer or discoverers shall, *before recording*, excavate thereon a shaft at least ten feet deep, or deeper if necessary, to find a well-defined crevice, or forfeit all right and title he or they may have acquired by virtue of such discovery."

Thus stood the local law of the Griffith mining district from and after the 9th day of February, 1866.

The facts in the case under consideration as shown by the record are as follows, viz:

In the latter part of May, or the first part of June, 1866, one Thomas A. Higginbotham discovered the Silver Ore Lode, and by virtue of said discovery, and under the provisions of the territorial act above quoted, took possession of the same. During the said months of May and June, and subsequently, he kept in position at the discovery shaft of said lode a good and substantial stake, having inscribed thereon his name as discoverer, the name of the lode, the date of discovery, and the number of feet claimed. He recorded his claim, as above set forth, in the proper office on the 3d day of November, 1866, prior to which

time he had sunk a shaft over ten feet deep, finding a well-defined crevice from the surface of the earth to the bottom of the shaft. During the months of May and June, 1866, he had a well-defined crevice in his discovery shaft. On the 27th day of August, 1869, he sold the premises to the present claimant. Over one thousand dollars have been expended upon the lode, and there are no opposing claims.

In my opinion this claim, within the meaning of the proviso, was *located* prior to the act of 1866. Higginbotham discovered a lode; by virtue of such discovery, and in accordance with the local laws, he took possession of it. He posted the proper notice, and so far as he had gone otherwise fully complied with the territorial act. His claim was not recorded until after the act of 1866, but the territorial act required that certain labor necessarily requiring considerable time should be performed prior to recording, viz., that a shaft should be sunk at a depth of at least ten feet. By local laws Higginbotham had a good and valid claim, so far as he had progressed at the date of the act of 1866. He had an unrecorded location, one that was probably not susceptible of being recorded at that date. Within reasonable time thereafter, and when he had performed the work required, he recorded his location. I am unable to see wherein he failed in any particular to comply with the territorial act, or wherein his claim under local law was defective. The recording was only one of several requirements, and the last one of a series. His claim was located when he initiated these proceedings in the manner prescribed, and continued to be a location as long as he complied with the requirements of the territorial act.

I think you erred in holding the date of record in this case to be conclusive of the date of location, and I am of the opinion that the location within the meaning of the proviso was prior to the act of 1866.

DEPOSITS OF SLATE.

Acting Commissioner Curtis to Register and Receiver, Stockton, Cal., Oct. 23, 1874.

You state that valuable deposits of roofing-slate have been discovered upon said tract, and that said applicants have expended quite a large amount in the development thereof.

You will allow said applicants to proceed with their application, and upon full compliance with the [mining] law and instructions, enter and pay for their claim.

VIRGINIA *vs.* CROWN POINT.

An application for patent virtually withdraws a mining claim from market, and no other survey of the same tract should be approved by the surveyor-general until the first application is disposed of.

The field-work of such other survey may be made at any time by a U. S. deputy-surveyor.

An appeal may be taken from the action of the surveyor-general in approving a survey to the Commissioner of the General Land Office.

Instructions in case of conflicting mining claims.

Commissioner Burdett to Surveyor-general Searight, Denver, Colorado, Nov. 5, 1874.

The facts in the case are as follows, as appears from the papers on file in this office:

On the 5th of September, 1873, Job V. Kimber *et al.* made application to the surveyor-general of Colorado for survey of the Crown Point lode.

The survey having been made, the plat and field notes were approved by your predecessor on the 4th November, 1873, the same being survey No. 370.

On the 5th of the same month the survey of the claim of H. B. Morse *et al.* upon the Virginia lode was approved, the same being survey No. 378.

On the 7th of Nov., 1873, Kimber *et al.* filed in the local land office an application for patent for said Crown Point lode, as described in said survey, No. 370, and on the 6th of January, 1874, H. B. Morse *et al.* filed an adverse claim against said application, alleging that the premises described in said application conflict with and embrace a portion of the Virginia lode.

On the 12th of January, 1874, Kimber *et al.* re-located the Crown Point lode, in order to correct certain irregularities and errors in their former notice of location, and made application to the surveyor-general for a re-survey of said lode, which was ordered on the 22d of January, 1874, and designated survey No. 407.

On the 31st of January, 1874, the attorney for the Crown Point claimants filed with the register and receiver at Central City a request to be permitted to withdraw said application for patent, and to file a new application based upon said re-location and re-survey.

On the 12th of September, 1874, having carefully examined all the papers in the case, this office informed the register and receiver at Central City that no patent could issue upon said application for patent, as the applicants had failed to comply with the law in several respects, among which was the fact that the location upon which the application was based had not been made in accordance with law.

They were also instructed to permit the said applicants to commence *de novo* with their application, upon full compliance with the law and instructions.

Upon being advised of the decision of this office, the attorney for the Crown Point claimants addressed a communication to the survey-general of Colorado, dated the 23d ultimo, requesting the approval of said survey No. 407.

On the 30th ultimo the attorney for the Virginia claimants addressed a communication upon the subject, and requested to be informed of of your *decision* in the premises, before said survey should receive your approval, in order that he might take an appeal from your decision, in case you should decide to approve said re-survey.

On the 1st instant you informed said attorney by letter that, after certain corrections had been made, it was your "purpose to approve the survey, as at present advised." On the 3d instant said attorney for the Crown Point claimants addressed you a letter informing you that he appealed from your decision to approve said survey. On the 8th instant, after the receipt by you of said notice of appeal, you approved said survey No. 407.

The questions submitted are these:

1. Was the re-survey of the Crown Point lode, made after the filing of said adverse claim, and prior to the final disposition of the said application by this office, legal?

2. Does an appeal lie from the decision of the surveyor-general to approve a survey of a mining claim?

In reference to the first question I would state that, after an application has been made for patent for a given mining claim, such claim is virtually withdrawn from market, pending the final disposition of the case, and no survey, as the basis of a patent, should receive the approval of the surveyor-general for the same tract until the first application has been disposed of.

Parties may, however, have the *field work* of a survey of their claim made at any time; and if executed by a duly appointed deputy mineral surveyor, such survey may receive the approval of the surveyor-general, at any time when no application for patent is pending for the same mine, if it is found upon examination that the survey is correct and made in accordance with law.

In the case under consideration the *field work* was executed while the said application was pending. The survey was not approved until the 8th of October, 1874, after said application for patent had been rejected.

In reference to the second question I would state that the approving of a survey of a mining claim by the surveyor-general is merely an endorsement thereon, over his own signature, that the survey is correct, and that it has been made in accordance with law and instructions; and until he has actually affixed his signature approving such survey, no appeal lies to this office, as an appeal can not lie from a *proposed action or decision.*

If, however, a protest is filed against a given survey, you should in all cases transmit the plat and field notes of survey, together with all papers which may have been filed with you in the case, to this office, that such action may be taken as the law and the facts may warrant. [See decision in Orient case, August 9, 1880.]

In this connection I would state that the surveyor-general has no jurisdiction in the matter of deciding the respective rights of parties in cases of conflicting claims.

Each applicant for a survey under the mining act is entitled to a survey of the entire mining claim, *as located*, if held by him in accordance with the local laws and Congressional enactments.

If, in running the exterior boundaries of a claim, it is found that two surveys conflict, the plats and field notes should show the extent of the conflict, giving the area which is embraced in both surveys, and also the distances from the established corners at which the exterior boundaries of the respective surveys intersect each other.

If parties desire to protect their interests, which would be adversely affected by the issuance of a patent for the claim as surveyed, they must file an adverse claim against such application in the manner and form prescribed by the statute, for in no other way can their alleged adverse rights be adjusted.

In the case under consideration, both surveys having been approved, the respective parties may, upon full compliance with the law and instructions, make application for patents for their claims to the local land officers, in which event it will be necessary for them to proceed in the manner indicated by the law and circular instructions.

PLACER CLAIMS.

Commissioner Burdett to Hon. H. F. Page, House of Representatives, Nov. 21, 1874.

The size of placer claims located prior to the act of July 9, 1870, is regulated and controlled by the local law. Subsequent to July 9, 1870, and prior to May 10, 1872, no location of a placer claim can exceed one hundred and sixty acres.

From and after the passage of the mining act of May 10, 1872, no location made by an individual can exceed twenty acres, and no location made by an association can exceed one hundred and sixty acres.

There is nothing in the mining acts of Congress forbidding one person, or an association of persons, purchasing as many *separate and distinct locations* as he or they may desire, and embracing in one application for patent the entire claim to which they have the possession and the right of possession by virtue of compliance with the local laws and Congressional enactments.

The law does not require an expenditure of five hundred dollars upon each *location* of a placer claim embraced in an application for patent, where the locations are contiguous and constitute one claim.

Where an application embraces two or more separate and distinct tracts of placer mining ground, the required amount, viz., five hundred dollars, should be expended upon each tract, and a copy of the diagram and notice posted upon each tract, to entitle the claimant to make entry thereof. (See Part IV.)

SHOO FLY, MAGNOLIA, AND OTHERS *vs.* MONO.

Where parties show that they were not discoverers, only 200 feet to each locator could be taken under the act of July 26, 1866.

Locations made under the act of May 10, 1872, must be accurately described.

In the matter of citizenship, the mining law is complied with, if citizenship be properly alleged and the fact be not controverted.

Where suit is commenced after the filing of an application for patent by a party who subsequently filed an adverse claim in regular form, the application will remain suspended until the case is decided in court or otherwise settled.

A stipulation wherein it is set forth that "the said action, by consent of the parties thereto, is hereby dismissed: the clerk of said court is hereby authorized to forthwith enter in his register such dismissal," filed in court by an adverse claimant, signed by authorized counsel, is a waiver of the adverse claim within the 7th section of the act of 1872.

Any state of facts which shows that the person alleging the same has a better right to the premises sought to be patented, or any portion thereof, than the applicant, is the proper subject-matter of an adverse claim, and when properly set forth should be treated as such.

Commissioner Burdett to Register and Receiver, Salt Lake City, Utah, November 27, 1874.

On the 12th November, 1872, the application of M. T. Gisborn, O. Embody, W. D. Heaton, and W. E. Miller, for patent for sixteen hundred linear feet of the Mono Mine, was filed in your office.

The notice and diagram were posted upon the claim from the 2d November, 1872, to the 30th May, 1873, and in the register's office from the 12th November, 1872, to January 13, 1873. The notice was published in the Salt Lake *Daily Tribune* from the 12th November, 1872, to 13th January, 1873.

It appears by the copy of the notice of location that the Mono Mine was located on the 12th November, 1871, W. Heaton, M. T. Gisborn, and O. Embody claiming each 266⅔ feet, and H. D. Converse, T. R. Miller, Calvin Kirk, and E. McKendry claiming 200 feet each.

The claim is described in the location notice as extending 800 feet easterly and 800 feet westerly from the location monument.

Record was made of this location November 24, 1871, in the records of Ophir mining district, Tooele county, Utah.

On the 12th August, 1872, W. E. Miller filed in the office of the district recorder a notice of re-location of "200 feet in length undivided ground in the Mono lode * * * located the 12th day of November, A. D., 1871, * * * and running on and along the course of the lode, vein or deposit from the monument on which this notice is placed for the distance located."

In said re-location notice Mr. Miller also states that, "I claim this claim on the further ground that the locators of the said 'Mono' lode, vein, or deposit are not entitled to a discovery claim therein, the same lode, vein or deposit having been previously discovered, located, and recorded under another name."

In paragraph two of the sworn application of the applicants, it is stated that "a question being debated whether the said locators were entitled to claim and hold by said location the whole of said 1,600 feet, or any more than 1,400 feet thereof, the said applicant, William E. Miller, on the 12th day of August, 1872, with the consent of all the persons then owning and holding the possessory right to said 1,600 feet, re-located 200 feet of the same."

It is not alleged that the locators of the Mono Mine were the discoverers thereof. On the contrary, the re-location notice, which was filed by the applicants as evidence in support of their right of possession to said mine, and referred to in the sworn statement of the applicants as having been made with the consent of all persons "then owning and holding the possessory right" to said mine, contains the statement that the mine was not discovered by said locators, but that it had been previously discovered, located, and recorded under another name.

This admission made by the applicants that said mine had been previously discovered and located under another name should have been accompanied by a fuller showing that the previous location of said mine had been abandoned and forfeited under the local law, and that said premises were subject to re-location at the date of the location made by Gisborn *et al.*

There is testimony incidentally appearing in the record tending to the conclusion that a former admitted location was in fact permitted to lapse, and I am of the opinion that such is the fact; the evidence upon that point, however, ought to have been more specific.

The location made by Gisborn *et al.* could not in view of these facts be a valid location of more than fourteen hundred feet.

The re-location by W. E. Miller, of an undivided two hundred feet, was made August 12, 1872, after the passage of the mining act of May 10, 1872, and not in accordance with the provisions of the fifth section of said act.

The fifth section of said mining act provides that "all records of mining claims hereafter made shall contain the name or names of the

locators, the date of the location, and such a description of the claim or claims, located by reference to some natural object or permanent monument, as will identify the claim."

The re-location notice under consideration simply described the premises intended to be located thereby, as consisting of two hundred feet in length, undivided ground in the Mono Lode, "running on and along the course of the lode, vein, or deposit from the monument on which this notice (is) placed for the distance located."

I find no warrant either in the Congressional enactments governing in the matter of running locations or the local laws for this attempted re-location of two hundred feet by Miller. The recitals found in the record seem to indicate that it was an attempt by indirection to appropriate benefits awarded by law to discoverers only, by a party admitted not to stand in that relation to the claim for which patent is sought, and by the same process to correct an irregularity as to the number of feet claimed by each of the locators, patent upon the face of their location notice.

Objection is made to the issuance of a patent upon said application, for the reason that the Register permitted certain papers in the case to be taken from his office, and that they were not in his custody during the entire period of publication of the notice. It appears that the plat of the claim, the notice of intention to apply for a patent, and the sworn statement of two persons in regard to the posting of the notice upon the claim, remained in the Register's office during the entire period of publication of the notice. These papers were sufficient to inform all parties in interest of the extent and *locus* of the claim for which patent was sought.

It does not appear that any party in interest was in fact damaged by this withdrawal. The doctrine cannot be admitted that a claimant may be defeated in his rights by a mere suggestion of irregularity in official conduct.

The proofs of compliance with the law, except as hereinbefore stated, are satisfactory.

On the 18th December, 1872, Lafayette Granger and Farley B. Granger filed in your office an adverse claim against said application for patent, accompanied by a plat certified to by Thomas Davis, U. S. deputy mineral surveyor, as having been made from an actual survey, which shows the extent of the conflict.

In their sworn statement they allege that they are citizens of the United States; that they are owners of and in possession of the Magnolia East and Magnolia West lodes; that the said application for patent conflicts with and embraces a portion of the Magnolia East and West lodes; that said lodes were located and have been held and worked in accordance with the local laws; that they are the "owners of, in possession of, and entitled to the possession of, so much of said mining ground as is embraced within the survey and diagram as is hereinbefore stated." They also allege that they had commenced an action in ejectment in the third judicial district court of Utah against said applicants. These adverse claimants filed copies of the original notices of location of said Magnolia East and Magnolia West lodes, but did not file an abstract of title to the premises referred to in said adverse claim.

It is urged that this adverse claim is insufficient, as the same is not accompanied by an abstract of title from the office of the proper recorder, tracing the title from the original locators to said adverse claimants.

The Hon. W. H. Smith, Assistant Attorney-General, in his opinion dated the 30th September, 1873, in case of the Jenny Lind Mining Company *et al. vs.* The Eureka Mining Company, states that "if the adverse claimants properly *allege* that they are the *owners* of the claim, that is good pleading, and sufficient to notify the applicant for patent of what is claimed. I think an omission to file an abstract should be treated as an irregularity only, and not as a defect that vitiates the adverse claim."

This opinion was concurred in by the Hon. Secretary of the Interior, on the 24th November, 1873.

It appears by the certificate of the clerk of the court of the third judicial district, Utah, and by a copy of the original bill, exhibits, answer, amended complaints, and summons now on file with the case, that said adverse claimants commenced proceedings in said court on the 4th December, 1872, against said applicants, to recover possession of the Magnolia mine, alleged to be unlawfully withheld from plaintiffs by said defendants, and for damages.

This suit is still pending and undetermined.

It will be observed that this suit was commenced on the 4th December, 1872, twenty-two days after the date of filing said application for patent, and fourteen days before the date of filing said adverse claim.

It is contended by the applicants for patent that said adverse claim has been waived by a failure to commence proceedings in court within thirty days *after* the date of the filing of said adverse claim.

The seventh section of the mining act of May 10, 1872, provides that "it shall be the duty of the adverse claimant within thirty days after filing his claim to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment," and a failure so to do "shall be a waiver of his adverse claim."

This adverse claim having been made out in due form, and filed within the time prescribed by the statute, the only question presented is, whether or not it is the duty of this office, under the law, to suspend proceedings upon said application until the suit commenced by said adverse claimants shall have been settled in a court of competent jurisdiction, or the adverse claim waived.

It is true that the statute makes use of the words "within" and "after," but these words should not in my opinion receive such a construction as to defeat a claimant who clearly brings himself up to the full measure of compliance with the objects and ends of the mining act.

It is not seriously objected that the suit commenced by the Magnolia claimants is not in every essential such an action as is contemplated by law.

As to the form of action, the parties, plaintiffs, and defendants, the subject-matter of the controversy, and the court where the suit is pending, all is regular.

The principal ground upon which rests the objection to the sufficiency

of the suit commenced before the day named in the act, seems to be found in the view urged, that the cause of action to be tried has its inception in the proceedings instituted by the applicant for a patent, and does not develop into a right of action until such time as the adverse claim shall have been filed.

I think this view is erroneous. The cause of action, the settlement of which is referred to the courts, is not one created, nor is the remedy defined, by the act of May 10, 1872. The subject-matter of the controversy to be determined is not whether or not an applicant shall have a patent from the United States for his location, but it is whether one party unlawfully withholds the possession of the premises or any part thereof from the other, and upon that issue the unlawful entry or cause of action may be shown to have accrued to the plaintiff at any time within the running of the statute of limitations, as prescribed by the law of the land.

It has grown into an axiom that the law favors the diligent suitor. I cannot reconcile it with the spirit and purposes of the mining act to hold this seeming excess of diligence on the part of the Magnolia claimants as fatal to the rights they assert.

In my opinion the Magnolia claimants have shown a substantial compliance with the law in the matter of filing their adverse claim and commencing suit; and as said adverse claimants appear to have prosecuted their suit with reasonable diligence, it will be necessary to suspend further proceedings upon said application until the controversy shall have been decided by the courts or the adverse claim waived, as prescribed by the 7th section of the act of May 10, 1872.

On the 31st December, 1872, J. S. Houtz, Jacob Ornstein, Morgan Grant, Warren G. Child, John L. Child, Wm. A. Rooks, and Thomas R. Miller, filed an adverse claim against said application for patent, alleging in their sworn statement that they and one William Clark are the owners and entitled to the possession of the Shoo Fly mine.

This adverse claim was in proper form, and filed within the time prescribed by the statute.

On the 30th January, 1873, suit was commenced upon said adverse claim.

On the 22d May, 1874, the attorneys for the plaintiffs and defendants filed with the clerk of the court of the third judicial district a stipulation, setting forth that "the said action by the consent of the parties thereto is hereby dismissed. The clerk of said court is hereby authorized to forthwith enter in his register such dismissal," &c.

A similar stipulation was filed with the clerk of the supreme court of Utah, upon the same day, signed by the attorneys for the respective parties to the suit.

It appears by the affidavit of C. A. Gould, deputy clerk of the supreme court of Utah, dated the 8th day of August, 1874, that there is no "other order or stipulation in relation to the dismissal of said cause" on file in his office.

The territorial statute of Utah, page 42, Laws of Utah, nineteenth session, provides that "an action may be dismissed or a judgment of non-suit entered in the following cases:

"First, by the plaintiff himself at any time before trial upon the payment of costs, if a counter claim has not been made." * * *

"Second, by either party upon the written consent of the other." * * * "The dismissal mentioned in the first two subdivisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly."

The applicants insist that the filing of this stipulation is a dismissal of the cause, and that the Shoo Fly claim is no longer an element in the controversy here. I am of a different opinion. Until the court shall have given sanction to the stipulation by rendering its judgment thereon, the cause remains pending and undetermined. The parties to it may withdraw their action, and the court order the cause to proceed. The territorial statute of Utah embodies the almost universal rule of practice in cases where, like this, issue has been joined; there must be a judgment by the court evidencing the disposition made of the case. The suit of J. S. Houtz *et al.*, who claim the Shoo Fly mine, is still pending. [See Secretary's ruling following.]

On the 7th January, 1873, William A. Rooks filed in your office what purports to be an adverse claim and protest against the said application for patent.

In his sworn statement Mr. Rooks alleges that he is a citizen of the United States; that on or about the 1st day of September, 1871, he entered into a contract with H. D. Converse, T. R. Miller, Calvin Kirk, and E. McKendry, by the terms of which agreement he (Rooks) was to furnish said Converse *et al.* with such provisions, tools, and supplies as would enable them to subsist, prospect for mines, and make discoveries of lodes, veins or deposits bearing precious metals; and that Converse *et al.* were by the terms of said agreement to prospect for mines, and make locations of such mines as might be discovered by them in their own and his own (Rooks') names, each to have and own in his own right an undivided one-fifth interest in all such discoveries and locations; that he furnished the supplies and tools as directed by Converse *et al.*, and when required so to do; that on or about November 1st, 1871, the said Converse *et al.* located and occupied, in strict accordance with the district laws, a certain lode one thousand feet in length, to wit: five hundred feet each way from the place of discovery and the location monument, along the line of the road, and named and designated said lode the Giraffe; that they erected a monument on said lode, and placed thereon a written notice of location describing the premises located and giving the names of the locators, to wit: C. Kirk, Converse, Miller, McKendry, and Rooks, each claiming two hundred feet in said mine and location; that immediately after said location the locators thereof commenced to work upon said mine, and remained continuously in the possession thereof for some time; that before the expiration of the time prescribed by the district laws for making record of said location, the other joint owners in said location, without his (Rooks') knowledge or consent, and while he was absent from the district, entered into an agreement with three of the present applicants for patent, viz: Gisborn, Embody, and Heaton, by which the three last-named parties agreed to do and perform all the work required by the local law to hold said claim, and in consideration thereof they were to have their names added to said location notice, each claiming two hundred feet additional, and to make record of said original notice as amended in the proper recorder's office; that Embody, Gisborn, and

Heaton entered into the possession of said mine in accordance with the terms of said agreement, jointly with the other locators, and that subsequently, without the consent or knowledge of Rooks, they took down the original notice of location from said monument and wrote out another notice, and placed thereon the names of all of said locators, also the names of Embody, Gisborn, and Heaton, excluding however, and leaving out the name of Rooks; that this notice named the lode the "Mono," and was placed upon the same monument previously erected and upon which the Giraffe notice was posted; *that the Giraffe notice was never recorded*, but that such parties caused the said Mono notice to be recorded in the office of the district recorder; that the Mono location embraced the entire one thousand feet included in the original notice of the Giraffe, and that the Mono and Giraffe are one and the same lode; that the Giraffe notice has been cancelled or destroyed.

The statements made by Rooks are corroborated by the sworn statements of Calvin Kirk and T. R. Miller, two of the Mono locators.

Attached to the protest filed by Rooks is a certificate of the clerk of the court of the third judicial district, Utah, to the effect that W. A. Rooks commenced suit against the said applicants on the 8th day of August, 1872, "to recover a one-sixth interest in the Mono mine." He also filed a copy of the record and proceedings in said suit.

On the 1st September, 1874, the attorney for Rooks filed in this office a record of the proceedings in said suit, from the commencement thereof to the 1st August, 1874.

It appears that this suit is still pending and undetermined.

This filing cannot be considered as an adverse claim under the mining act. [See Secretary's ruling following.]

Mr. Rooks does not allege or show that the premises described in said application conflict with any mining property owned by him by virtue of compliance with the local laws and Congressional enactments. He simply alleges, and endeavors to establish the fact, that he is equitably entitled to the possession of an undivided one-fifth interest in one thousand feet of the Mono location, his asserted equities growing out of certain transactions having to do with the mining tract covered by that, and not by some other but conflicting tract or claim.

This is not such a controversy as can be taken notice of for any purpose by this office.

Secretary Delano to Commissioner Burdett, July 28, 1875.

I have examined the case of The Mono Mining Company *vs.* The Magnolia East and West Company, The Shoo-Fly Company, and William A. Rooks, on appeal from your decision of November 27, 1874.

I affirm your decision on the grounds stated therein, so far as it sustains the adverse claim of the Magnolia company, adding, with reference to the objection urged against it in the matter of proof of citizenship, that the law is complied with if citizenship be properly alleged, and the fact be not controverted. (Eureka Co. *vs.* Jenny Lind Co., Sec. Dec'n, page 124; Kempton case, Sec. Dec'n, Jan. 2, 1875, page 172.)

With reference to the adverse claim filed by the Shoo-Fly Company, I am of the opinion that the stipulation filed in court in the suit commenced by the adverse claimants, signed by properly authorized

counsel, and so far as shown without fraud, was a waiver of the adverse claim within the meaning of the 7th section of the act of 1872. I therefore reverse your decision so far as it holds the Shoo-Fly protest to be a valid subsisting adverse claim.

I do not agree with your ruling upon the protest in the nature of an adverse claim filed by William A. Rooks. This adverse claim was filed January 7, 1873. It alleged that the said Rooks was a citizen of the United States; that on or about the 1st day of September, 1871, he entered into a contract with H. D. Converse, T. R. Miller, Calvin Kirk, and E. McKendry, by the terms of which the said Rooks was to furnish said Converse *et al.* with such provisions, tools, and supplies as would enable them to subsist while prospecting for mines, and making discoveries of lodes, veins, or deposits bearing precious metals, and that the said Converse *et al.* were, by the terms of said agreement, to prospect for mines, and make locations of such as might be discovered by them in their names and in his name as joint discoverers, and that each of said parties was to own in his individual right one undivided fifth interest of all such mines or lodes so discovered; that the said Rooks furnished the provisions, tools, and supplies when required so to do, and fully complied with his said agreement; that on or about the 1st of November, 1871, the said Converse *et al.* located and occupied, in accordance with the local laws, a certain lode 1,000 feet in length, to wit, 500 feet each way from the place of discovery and location monument along the line of the lode, and named and designated the same the Giraffe; that they erected a monument on said lode, and placed thereon a written notice of location, describing the premises located and giving the names of the locators, including the name of the said Rooks as one of the locators thereof, and claiming for each 200 feet of said mine and location; that immediately thereafter the said locators commenced to work upon said mine, and that they remained continuously in possession for some time; that before the time had expired in which the local laws required that record of the location should be made, the other joint owners of said mine, without the knowledge or consent of said Rooks and during his absence, entered into an agreement with three of the present applicants for patent for the Mono lode, to wit, Gisborn, Embody, and Heaton, by which the said three last-named parties agreed to do and perform all the work required by the local laws to hold said claim, and in consideration thereof they, the said three present applicants, were to have their names added to said location notice, each claiming 200 feet additional, and to make record of said original notice as amended in the proper recorder's office; that the said three applicants entered into possession of said mine in accordance with the terms of said agreement, jointly with the other locators, and subsequently, without the knowledge or consent of the said Rooks, they took down the original notice of location from said monument and placed thereon another notice, containing the names of the locators of said mine, including the names of the said Embody, Gisborn, and Heaton, but excluding therefrom the name of the said Rooks; that said last-described notice named the said mine the "Mono," and was posted upon the identical monument previously erected, and upon which the Giraffe notice was posted; that said Giraffe notice was never recorded, but the said "Mono" was; that

the said "Mono" location included the identical 1,000 feet covered by the Giraffe location, and was the same lode as the Giraffe; that the Giraffe notice was concealed or destroyed, and that the said Embody, Gisborn, and Heaton, at the time they made all the arrangements and agreements aforesaid, had full knowledge of all the rights of the said Rooks, and that he was the owner of one undivided fifth of said original location.

Rooks, on the 8th of August, 1872, commenced suit in the proper court against the said applicants to "recover one-sixth interest in the Mono mine," which suit is now pending and undetermined.

Upon these facts you held that whatever interest Rooks had in said mine, it did not amount to an adverse claim, because it did not originate by virtue of his compliance with the local laws and acts of Congress relating to mineral lands.

I am of opinion that the interest of Rooks was an adverse interest, and was the proper subject-matter of an adverse claim. From his statement it is clear that his right to one undivided fifth of the Giraffe location is superior to any interest that the applicants have in the same. I suppose that if Rooks had purchased the entire interest of his co-locators in the 1,000 feet and paid for it, and the present applicants had known of it before they pretended to acquire any interest in the same, that his claim would be an adverse one, and would properly delay the issuance of a patent until the matter could be heard in court. In my judgment, any state of fact which shows that the person alleging the same has a better right to the premises sought to be patented, or any portion thereof, than the applicants for patent, is the proper subject-matter of an adverse claim, and when set forth in the manner required by the statute it amounts to an adverse claim, and should be treated accordingly.

I reverse your decision as to the said adverse claim of Rooks, and hold it to be sufficient.

I do not consider it necessary at this time to consider the objections raised relating to the application of the Mono Company, inasmuch as they will more properly arise upon the return of the case to your office after decision in the courts, to which it must go upon the adverse claims of the Magnolia Company and of Rooks.

KEMPTON MINE.

Where the given name of a party executing a deed differs from his name as found on the location notice, identity of persons must be shown.

Full and complete copies of the respective conveyances are unnecessary under the rules. A complete abstract only is required.

The affidavit of continuous posting of the plat and notice on the claim must be made by one of the parties owning the mine at the date of entry at the local office.

The plat posted on the claim as required by the statute must be a copy of the plat filed with the application for patent.

Only citizens, or those who have declared their intention, are authorized to claim and locate mines.

A foreigner may make a mining location and dispose of it, provided he becomes a citizen before disposing of the mine.

Proof that a party was not a citizen before disposing of his claim must be affirmatively shown by the adverse claimant.

Secretary Delano to Commissioner Burdett, January 2, 1875.

I have examined the case of Warren Hussey *et al.* applicants for the

Kempton Mine, situated in the West Mountain mining district, Salt Lake county, Utah, on appeal by the Galena Silver Mining Company from your decisions of September 30 and November 10, 1874.

On the 10th of November, 1873, the said Warren Hussey and six others filed their application in the local office at Salt Lake City for the Kempton Mine, and gave notice by publication in the usual manner. During the sixty days of publication, the owners of the Neptune lode filed an adverse claim, which was afterward withdrawn upon some terms of compromise agreed upon by the parties. Hussey and others, pending their application for the Kempton mine, transferred all their interest to Lemuel U. Colbath, B. M. Du Rell and Isaac Schoenberg, who were substituted as applicants for the Kempton, and have since prosecuted the application for a patent in their own names.

On the 7th day of September, 1874, and more than sixty days after the period of publication had fully expired, the Galena Silver Mining Company filed in the General Land Office a protest against the issuance of patent to the Kempton claimants, alleging that the Galena lode and the Kempton lode were identical, that the surface claims of the two conflicted, that the Galena was located many years before the Kempton, and that the Kempton had failed in several respects of complying with the law and was not entitled to a patent. You properly rejected this protest, so far as it purported to be an adverse claim, on the ground that it had not been filed within the period of "sixty days of publication," as expressly required by the 6th section of the act of May 10, 1872, and you allowed the protestants, under the last clause of the said 6th section, to undertake to show that the applicants had failed to comply with the act.

You overruled all the objections that were suggested, and decided that the Kempton applicants were entitled to a patent. A motion was made to set aside your decision, which you also overruled. An appeal has been taken from both of the decisions.

On the hearing of this appeal the objections made before you have been urged, and perhaps some others which are now presented for the first time in the history of the case.

I will consider them first, however, premising that they are not made by any party to the record in interest, but are made by a third party who stands in the light of *amicus curiæ*, and who has the right of showing only that the applicants have not complied with the law.

1. It is objected that it does not appear that B. F. Buck, one of the original locators of the Kempton mine, has ever transferred his interest in the same.

The original application for the Kempton patent, which is sworn to by five different persons, alleges that "Samuel Buck, under the name of B. F. Buck," was one of the original locators, and that the said Samuel had transferred his interest in the mine to John Segus, who was one of the applicants for patent. There is in the abstract of title furnished a certificate of the recorder of the conveyance from Samuel Buck to the said Segus. I think this is sufficient. Names are arbitrary. Identity is the important matter, and the identity of Samuel Buck with the B. F. Buck of the location is satisfactorily shown.

2. It is further objected that full and complete copies of the respective conveyances, showing title in applicants, are not set forth in the records.

It is conceded that brief abstracts of the contents are set forth. Under the rules and regulations I think this is sufficient. If more should be required, the rules should be changed.

3. It is also objected that there is no affidavit of the *proper party* that the plat and notice were posted in a conspicuous place on the claim during the period of publication.

The 6th section provides that "At the expiration of the sixty days of publication *the claimant* shall file his affidavit showing that the plat and notice have been posted in a conspicuous place on the claim during said period of publication." It is argued that the claimant referred to is one of the original locators. I think that this is not necessarily so.

When the original locators make the application for patent, then one of them must make the affidavit, but when the original locators have assigned their interest and the application is made by the assignees, then the assignees are the claimants, and one of them may make this affidavit. In this case it was first made by R. T. Anderson, the Superintendent of the mine, and afterwards by Colbath, who is one of the present applicants, and is therefore one of the claimants within the purview of the 6th section.

4. It is also objected that there is no sufficient proof that the plat and notice were posted in a conspicuous place on the claim. The objection is not that there was not *a* plat and notice posted on the claim, but that there is no proof *what plat and notice* were thus posted.

The 6th section provides that the applicant for patent shall file in the proper land office, under oath, an application together with a plat and field notes of the claim made by the authority of the United States Surveyor-general, "and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted as aforesaid, and shall file a copy of said notice in such land office, and shall thereupon be entitled to a patent," etc. The application for patent in this case alleges "that the notice of intention to apply for a patent, together with a plat of the survey of said mine, was duly posted upon the same on the 31st day of October, A. D. 1873, in a conspicuous place, as will appear by the affidavit of W. A. Watson and Henry Curran, herewith submitted, marked Exhibit 'E.'"

When the papers reached this Department "Exhibit E" was not found in its proper place in the application, but there was found detached from the application an affidavit of W. A. Watson and Henry Curran, marked in red ink "Exhibit E," in the same handwriting in which the other exhibits attached to the application were written. This affidavit stated "that a plat and notice, of which the attached are true copies, were posted conspicuously on the Kempton mining claim on the 31st day of October, A. D. 1873, that affiants were present and saw the same so posted."

There is also found among the papers a plat of the survey of said Kempton mine, certified to by the surveyor-general of Utah, numbered 19, dated October 1, 1873, and a notice of application for patent, partly written and partly printed, dated October 11, 1873, and in due form. This plat and notice bear physical evidence that they have been

attached to the affidavit of Watson and Curran. There is in the upper left-hand corner of each a peculiarly-shaped puncture, which upon its face shows that it was made in each paper at the same time and while they were together. There is also physical evidence that the papers thus attached were afterwards separated, and attached in an entirely different manner by mucilage. The plat is the largest paper of the three, the notice is next in size, and the affidavit the least. The notice has been attached to the bottom of the plat by mucilage, and in the same way the affidavit has been attached to the bottom of the notice. The evidence of the attachment of the plat and notice amounts to absolute demonstration. The ragged edges of the two exactly fit each other. The evidence of the attachment of the notice and affidavit is not so complete, but it is quite satisfactory. The plat has a small hole in each corner, such as would be made if it had been tacked up or posted.

My own opinion, founded upon an examination of the papers, is that the affidavit, notice and plat were originally attached by a metallic fastening in the upper left-hand corner of each, and, being thus attached, were filed with the application as Exhibit E; that after being thus filed the Register detached them and attached the plat and notice by mucilage, as described above, and posted them up in his office, and that he afterwards attached the affidavit and transmitted them to the Commissioner of the General Land Office. The Commissioner has certified that the plat and notice were attached, and he thinks the affidavit was also attached to them when they were received from the local office.

There are on file in this case the affidavits of numerous persons that the plat and notice were posted on the 31st of October, 1873, in a conspicuous place on the claim, and so remained during the entire period of publication. It is true they do not specify particularly what plat and notice, because, at the time they were taken, there was no controversy about their contents; but they do show that a plat and notice, which they all seem to have understood as in due form, were properly posted.

I entertain no doubt of the fact that a plat and notice, of which those above referred to as a part of Exhibit E were either copies or duplicate originals, were duly posted on the claim and for the period of publication, and I therefore overrule the last named objection.

5. Finally, it is further objected that there is no allegation or proof that the original locators of the Kempton mine were citizens of the United States, or that they had declared their intention to become such at the time the location was made.

The application, after setting out the location and transfer of said claim, alleges "that all the above-named locators of said claim and their grantees *are* citizens of the United States."

This is the only allegation or proof on this point contained in the entire record.

The first section of the act of May 10, 1872, provides "that all mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase *by citizens of the United States and those who have declared*

their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable, and not inconsistent with the laws of the United States,"

The 6th section provides "that a patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation *authorized to locate a claim under this act,* having claimed," etc. These provisions, and those of the mining act of July 26, 1866, and of the pre-emption and homestead acts, indicate clearly, to my mind, the intention of Congress that no one but a citizen, or a person who had declared his intention to become such, should have the privilege of locating a mine, or acquiring a patent therefor.

The language is too clear to admit of any other construction. I suppose the reason of the rule was to prevent foreigners who might be inimical to the well-being and prosperity of the Government from obtaining possession and control of the vast interests which grow out of the mineral lands of the United States.

I do not wish to be understood as deciding that a person who is not a citizen, or has not declared his intention to become such, cannot make a location of a mine, or dispose of it, provided he afterward becomes a citizen before he disposes of the mine. "Naturalization has a retroactive effect, so as to be deemed a waiver of all liability to forfeiture." (Osterman *vs.* Baldwin, 6 Wall., 122.) An assignor can transfer no greater interest to his assignee than he himself possesses. While he is unnaturalized he has no right to locate a mine. If he does so, and disposes of it before naturalization, a subsequent naturalization would not, in my opinion, save his location. If, therefore, it appeared in this case that the original locators were not citizens, or had not declared their intention to become such, at the time their location was made, and that they had not become citizens when they transferred the mine, I should have no hesitation in holding that the transfer was invalid and the claim of the applicants was not good. But there is no such allegation or proof in this case, and I should not be justified in presuming a state of fact which would work a forfeiture of the claim. The allegations, or pleadings, (if I may be allowed the expression,) in proceedings of this kind, should be construed liberally, as I have heretofore held, and not, as at common law, most strongly against the pleader. Under this rule of construction I find myself obliged to overrule the objection as to citizenship, which is accordingly done.

I affirm your decision.

RED PINE MINE.

An action in equity to restrain applicants for patent for a mining claim from further prosecution of their application is not such an action as can be taken notice of by the General Land Office.

A location notice which, after naming the locators and their interests to the extent of 1,000 feet, concludes as follows: "We claim 500 feet easterly and 500 feet westerly." "Situate about 200 feet easterly from the Sacramento"—is not void for uncertainty in the Ophir mining district, Utah, if location was made prior to May 10, 1872.

Commissioner Burdett to Register and Receiver, Salt Lake City, Utah, January 18, 1875.

On the 22d August last, you transmitted the papers in case of the application of Marcus Daly, for patent for the Red Pine Mine, Utah.

By the papers in the case it appears that the said application for patent was filed in your office on the 25th day of April, 1874; that the notice and diagrams were posted upon the claim from the 21st April, 1874, to the 22d August, 1874, and in the Register's office from the 6th June, 1874, to the 22d August, 1874; that the notice was published in the Salt Lake *Weekly Tribune* on the 6th June, 1874, and for eleven consecutive weeks thereafter.

The Red Pine Mine was located July 18, 1871, and record of such location was made on the same day in the Recorder's office of Ophir mining district, Tooele county, Utah.

By the abstract of title it is shown that the applicant has record title to the premises claimed.

On the 22d August, 1874, the applicant, having filed proof of compliance with the local laws and Congressional enactments, was allowed to make entry of the premises as applied for, no adverse claims having been filed. On the 17th September, 1874, Enoch Totten, Esq., filed in this office a paper purporting to be a copy of a bill in equity filed in the district court for the third judicial district, Utah, the general nature and object of which seems to be to restrain said Daly and one Walker and others, who are joined as defendants, from further prosecuting said application for patent. The plaintiffs named in said bill are Isaac S. Waterman and George R. Ayers. Whether or not any proceedings have in fact been had under said bill does not appear, nor is it necessary to inquire, since it is not such action as can be taken notice of by this office.

At the same time were filed the affidavits of Geo. R. Ayers and Levi Smiley.

In the sworn statement of Mr. Smiley he alleges that he had never seen the survey-stakes of the "Red Pine survey, and never had any knowledge that such a survey had been made;" that he had never seen the plat and notice of application for a patent for said mine, although he had frequently passed over the ground included in such survey since June 1, 1874; that he had no knowledge that said application for patent had been made until September 7, 1874; that he is mining captain on the St. Louis and Hidden Treasure mine.

In his sworn statement Mr. Ayers alleges that he is the same person who made oath to said bill, which was filed in the office of the clerk of the court of the third judicial district, Utah, on the 11th September, 1874, in which Isaac S. Waterman and Geo. R. Ayers are plaintiffs.

In the case under consideration no adverse claim was filed within the time prescribed by the statute.

The 6th section of the mining act provides that an adverse claim to be considered must be filed within the sixty days' notice by publication, "and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with this act."

The protestants urge that the location of the Red Pine was void for uncertainty.

The 4th section of the district laws in force at the date of said location provides "that the notice shall state the number of feet claimed in the location, number claimed each side of monument, the names of

the parties locating the same, and the number of feet claimed by each locator, name by which the ledge or lode shall be known."

SEC. 7 provides that "in making a record of location of any claim the same shall be definitely described with reference to some natural or artificial monument."

SEC. 21 of said laws provides that "the recorder in person or through his deputies go on the ground before filing a location for record, and see that the proper notice and monument are placed thereon, and note on the notice and in a book for that purpose the locality of said location."

The location notice in the case under consideration reads as follows:

"RED PINE, LOCATED JULY 18, 1871.

"*Notice.*

"We, the undersigned, have this day located and claimed 1,000 feet on this lead, lode, ledge, or deposit; together with all dips, spurs, and angles. We claim it according to the laws of Ophir mining district and the laws of the United States. This mine to be known as the Red Pine.

"Jesse Foster—400 ft.
"Cancey Porter—200 ft.
"E. V. Aukram—200 "
"W. Aukram—200 "
"We claim 500 feet easterly and 500 feet westerly.
"Situate about 200 feet easterly from the Sacramento."

This notice seems to meet all the requirements of the local law, and to have been made in accordance therewith.

It will be observed that it is made the duty of the recorder or his deputy to "go on the ground before filing a location for record, and see that the proper notice and monument are placed thereon."

This notice *was filed for record* on the 18th July, 1871, *and recorded.* This act of the recorder may be fairly appealed to as being corroborative of the sworn statement of the applicant that the local law had been complied with in the matter of said location. Accompanying the other papers filed with said application is the sworn statement of two persons who allege that they are well acquainted with the Red Pine mining claim, and that the survey of said claim made by J. Gorlinski, deputy mining surveyor, in their presence, "embraces the identical ground as originally claimed by the locators and grantors of said mining claim."

The applicants allege compliance with the local laws, and have filed satisfactory evidence of such compliance.

The survey seems to have been regularly made, and the notice and diagram conspicuously posted up on the claim, to wit: upon the discovery shaft of said Red Pine lode.

Messrs. Waterman and Ayers also urge that the notice of intention to apply for a patent was not properly given, for the reason that the published notice required adverse claims to be filed within sixty days from the 6th of June, 1874, the date of the first publication, while the notice posted upon the claim, dated April 21, 1874, concludes with these words: "Any and all persons claiming adversely * * * are hereby notified that unless their adverse claims are duly filed, as according to law and the regulations thereunder, within sixty days from

the date hereof, with the register of the U. S. land office, Salt Lake City, * * * they will be barred in virtue of the provisions of said statute."

This gratuitous information on the part of the applicant is not shown to have injured any party or person, nor yet could their rights have been adversely affected had any parties filed an adverse claim against said application "according to law and the instructions thereunder."

Having carefully considered all the papers filed by the applicant and protestant, I am of the opinion that the applicant has shown compliance with the law, and that patent should issue for said mine as applied for.

PETROLEUM CLAIMS.

Commissioner Burdett to Surveyor-general Stratton, San Francisco, California, Jan. 30, 1875.

Petroleum claims may be entered and patented under the mining act of May 10, 1872.

DEPOSITS OF UMBER.

Commissioner Burdett to Wm. Clayton, Salt Lake City, Utah, Jan. 30, 1875.

Lands containing valuable deposits of umber may be patented under the mining acts of Congress.

The price per acre depends upon the character and formation of the deposit. If it is found in veins or rock in place, the same rates per acre must be paid as in case of lode claims, viz, $5.

If the umber is not found in veins or rock in place, the proceedings would be the same as are prescribed in case of placer claims, and the rates $2.50 per acre.

EXPENDITURES ON RE-LOCATED MINES.

Commissioner Burdett to Wm. A. Arnold, Central City, Col., Jan. 30, 1875.

Where a party applies for a patent for a re-located mine, it will be necessary for him to offer satisfactory proof that a sum of not less than five hundred dollars has been expended upon the mine *by the applicant or his grantors.*

The fact that five hundred dollars had been expended upon the claim by a person or persons who subsequently abandoned it, will not relieve the applicant from the necessity of showing *that he or his grantors* have expended thereon the amount required by law.

EWING *vs.* HARTMAN.

Commissioner Burdett to Register and Receiver, San Francisco, California, February 18, 1875.

The land having been returned as mineral, the burden of proof was upon the agricultural claimants.

The testimony presented at the hearing shows that portions of the surface are susceptible of cultivation, and the balance appears to be used for grazing. While it is not shown that valuable deposits have been found in the Maymoon location, yet, in view of the discoveries

so far made, and the proximity of the land to the Oakville and Bella Union Quicksilver mines, the (agricultural) entry of Hartman will remain suspended to await further developments in the premises, as recommended by you.

DEPUTY MINERAL SURVEYOR.

Instructions to deputy mineral surveyors in States where the Commissioner of the General Land Office is *ex officio* surveyor-general.

Commissioner Burdett to Smith Scogin, Hot Springs, Arkansas, February 19, 1875.

In the discharge of your duties as deputy mineral surveyor, you will be governed by the instructions herein contained and the circular instructions from this office.

No official survey will be made except upon application of the claimant or his duly authorized agent.

The claimant must in all cases make satisfactory arrangements with the United States deputy mineral surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the payment of the same.

In making a survey of a claim, you will begin at some corner of the public surveys, and run a line either by course and distance, or by triangulation, to a corner of the claim, designating this corner as "Corner No. 1; beginning." You will then calculate the true course and distance in a direct line from the corner of the public surveys to said "Corner No. 1."

From Corner No. 1 you will proceed with the survey of the claim, giving courses and distances of the exterior boundaries, establishing a corner at each angle of the survey.

You will describe the corners fully, stating whether a post or stone, the size, depth in the ground, and how marked.

The corner monuments will be marked No. 1, No. 2, etc., as you proceed with the survey; also with the number of the survey.

You will note all objects crossed by your lines of survey, such as prior surveys, lodes, ditches, ravines, or lines of the public surveys.

You will note all shafts and their depths, all adits, cuts, drifts, shaft-houses, mills, etc., and represent the respective locations of the same upon the plats.

After describing fully the improvements on the claim, you will give your opinion in regard to the actual value thereof.

You will give the names of adjoining claimants, if any, and state the quarter-section, township, and range, in which the claim is situated.

On the plats the section lines will be represented in *black* ink; the quarter-section lines in *red*.

The field-notes will be made upon paper of uniform size.

The plats will be prepared upon paper 12 x 18 inches in size.

In each case *four plats* and *one copy* of the original field-notes will be transmitted to this office for approval.

When the same have been examined and approved, the original field-notes will be retained in this office; one copy of the plat will be transmitted to the Register of the proper land district, to be retained on his files for future reference, and two plats and one copy of the field-notes will be returned to you to be handed the applicant, to be disposed of as follows, viz:

1. One copy of the plat to be posted on the claim; and,

2. One plat and the copy of field-notes to be filed by the applicant with the Register and Receiver, with his application for patent.

Accompanying the plat and field-notes transmitted by you to this office for approval, you will forward the affidavits of at least two responsible parties that an amount of not less than five hundred dollars has been expended upon the claim in actual labor and improvements.

Great care should be exercised to have the courses and distances expressed in the field-notes correspond with those represented upon the plats.

PRINCE OF WALES, ANTELOPE, AND WANDERING BOY, *vs.* HIGHLAND CHIEF AND WELLINGTON.

This decision overrules application to set aside patents to the Prince of Wales, Antelope and Wandering Boy mines, Utah, and institutes proceedings to cancel so much of the Highland Chief patent as conflicts with the Prince of Wales.

PRINCE OF WALES *vs.* HIGHLAND CHIEF.

The Prince of Wales was first located and it made the first application for patent. The adverse claim of the Highland Chief was filed after period of publication had expired, and would have been rejected had the local officers forwarded it to the General Land Office.

The applicants for patent should not suffer by the neglect of duty of any officer. The application of the Highland Chief did not, but the patent did, include part of the Prince of Wales.

The final survey and patent of the Highland Chief did not follow the application.

Publication of notice considered.

In mining cases consent cannot give jurisdiction. Substantial compliance with the statute is required.

WANDERING BOY *vs.* HIGHLAND CHIEF.

The Wandering Boy was the prior location, and, as above, should have been excluded from the Highland Chief patent.

PRINCE OF WALES.

Its location notice is not void for uncertainty. Miners' location notices should not be held to technical accuracy, but are sufficient if they put an honest inquirer in the way of finding the lode.

Parol evidence is admissible to define what tract is embraced in a location.

It is too late after patent has issued to make objection that publication of notice from January 6, 1871, to April 6, 1871, was not a compliance with the statute of July 26, 1866.

Proof of posting notice and diagram on the claim should be specific as to *when* the period of such posting commenced. It is too late after patent has issued to object to the proof because it is not thus specific. The objection that applicants did not have title at the date of application is insufficient, unless such fact is clearly shown. Contracts for conveyance, made before application, are sufficient if full title was acquired before patent issued.

A clerical error in the Register's final certificate in a mineral entry in an owner's name, as Butterfield instead of Butterwood, does not affect the validity of a patent issued under the name of Butterwood.

WANDERING BOY.

The location notice, application for patent, and final survey, agree in describing the same premises.

Proof of publication, which states that the notice was published for a period of ninety days, commencing April 15, 1871, is *prima facie* sufficient.

That notice and diagram were posted on the claim five days after publication was commenced, and thereafter for ninety days, was an irregularity only, and not fatal.

Locators and intermediate owners other than applicants will not be presumed aliens, in the absence of allegation or objection prior to issuance of patent.

In a subsequent patent it is proper to recite the fact that a prior patent had inadvertently and erroneously issued for part or all of the premises. The fact that Moore & Co., patentees and vendors of the Wandering Boy, have still an interest in seeing that their patent is unclouded, is sufficient to support their application to set aside the Highland Chief patent.

ANTELOPE.

Where there are no adverse interests, the patent for a mine will not be disturbed, notwithstanding irregularities in issuing it.

Examination of the 7th section, act of May 10, 1872.

Where an applicant for patent relinquishes the portion of his premises embraced in an adverse claim, further proceedings before the Department will not be stayed.

The only question before the court in mining application contests is the right of possession to the premises in dispute.

The mere fact of an adverse claimant obtaining judgment in court in his favor does not necessarily entitle him to a patent upon filing a certified copy of the judgment-roll and the certificate of the surveyor-general, and paying fees and price of land.

Secretary Delano to Commissioner Burdett, April 1, 1875.

I have carefully considered the application of Samuel S. Walker *et al.*, owners of the Prince of Wales mine, situate in Big Cottonwood mining district, in Salt Lake county, Utah, to have proceedings instituted, in the name of the United States, to set aside and annul the patent issued to Allen Schenck and Norris W. Mundy for the Highland Chief mine, situate in the said Big Cottonwood district, and also the like application of John M. Moore *et al.*, owners of the Wandering Boy mine, in the aforesaid mining district, to set aside and annul the patent for the said Highland Chief mine.

I have also considered the several applications made by Schenck and Mundy to have proceedings instituted in the name of the United States to set aside the patents heretofore issued to the said Samuel S. Walker *et al.*, for the Prince of Wales and Wandering Boy mines; and also the patent issued to J. R. Walker *et al.*, for the Antelope mine.

All of the above-named mines are located in the same neighborhood, and are of such supposed value as to have induced, between the respective claimants, protracted and heated contests before this Department. I shall follow the example of counsel, and treat all the applications as consolidated, and shall dispose of them in the order in which they are above named, premising that I have not the time that would be necessary to dwell, in detail, upon all the various alleged defects that have been commented upon by the learned counsel who have appeared and made oral arguments before me. I shall endeavor to omit none that are material.

1. The Prince of Wales against the Highland Chief.

The Prince of Wales location was made August 1, 1870, and recorded in the proper mining district August 3, 1870. The Highland Chief location was made and recorded in the proper mining district September 12, 1870.

The Prince of Wales made application for patent for 1,200 linear feet of the lode, with surface-ground of 100 feet in width, December 30, 1870. The Highland Chief filed an adverse claim against the Prince of Wales with the Register at Salt Lake, July 29, 1871, having filed on the 20th of June its application for a patent. On the 9th of November, 1871, the Register transmitted to the Commissioner of the

General Land Office the application of the Highland Chief and accompanying papers, but for some reason he neglected to transmit the application of the Prince of Wales.

On the 7th day of September, 1871, the Prince of Wales filed an adverse claim against the Highland Chief, but it was rejected because not sworn to. Afterwards, January 8, 1872, it filed another adverse claim, duly sworn to, but this was not done until after the period of publication had expired. The Acting Secretary, on appeal, April 13, 1872, held that the adverse claim of the Prince of Wales should be rejected because not filed within the period of publication. June 22, 1872, a patent issued to Schenck and Mundy for the Highland Chief.

It appears from the foregoing statement that the Prince of Wales was first located and recorded, and that it made the first application for patent, and that the Highland Chief filed an adverse claim thereto after the period of publication had expired. If this application and adverse claim had been forwarded to the Commissioner by the local officers, as they were bound to do under the instructions, the adverse claim would have been rejected because not filed within the period of publication. The fault was not that of the Prince of Wales, and it ought not to suffer by the neglect of duty of any official. (Railroad *vs.* Smith, 9 Wall., 99.)

The Highland Chief afterwards made application for patent while that of the Prince of Wales was pending The Prince of Wales filed an adverse claim after the period of publication had expired, and the Highland Chief for that reason caused its rejection. In other words, the Highland Chief, by the decision of this department, struck out and got rid of the adverse claim of the Prince of Wales for the very reason which should have excluded its adverse claim to the Prince of Wales application. The Prince of Wales had the prior right and the prior location, and it was manifest error in this department to allow the Highland Chief to transpose the condition of the parties, and thereby materially change the rights of the contending parties.

2. It is claimed that the patent for the Highland Chief did not follow the final survey in this, to wit: that its final survey did not include any of the surface-ground of the Prince of Wales, while it is conceded that the patent did include all the surface-ground where the Highland Chief crosses the Prince of Wales and the discovery shaft of the Prince of Wales and many of its valuable works.

The field notes of this survey, made October 5, 1871, upon this point are as follows: "From post No. 2, I run N. 53° E., 919 (feet,) to Prince of Wales claim, 1,200 (feet); leave Prince of Wales claim." And again: "From post No. 4, I run S. 53° W., 258 (feet), to Prince of Wales claim, 495 (feet); leave Prince of Wales claim."

The natural construction of this language is, that the spaces between the 919 and 1,200 feet on one side, and 258 and 495 feet on the other side, were omitted. If they were, the description is correct. If there is doubt whether they were omitted or not, it is proper to explain that doubt by the testimony of experts in surveying. Mr. Freeman, the deputy United States mineral surveyor, who made this survey, testifies that he did omit the surface premises of the Prince of Wales, and that he intended so to do. This is highly probable from the nature of the case. He found the Prince of Wales in the actual occupancy of this

surface-ground. He saw that it had its discovery shaft and valuable mining works upon it, and he probably knew that the Prince of Wales was the first locator, inasmuch as he was a surveyor and familiar with the mines in that location.

He would, therefore, very naturally pass over the premises, and exclude them from his survey, unless he had directions from his employers to do otherwise. I do not think that he had any such instructions, and my reason for so thinking will appear when I come to consider another branch of this subject. It is true that Freeman, in making up the area of his survey, did not exclude from such area the surface-ground of the Prince of Wales, amounting to 24-100 of an acre. It probably escaped his recollection when he came to make his plat. In my judgment the weight of the evidence shows that the surface-ground was excluded from the survey. It should therefore have been excluded from the patent, and it was error to include it.

3. It is claimed that the final survey and patent of the Highland Chief did not follow the original application and notice, and that the claim was floated to the eastward so as to include the discovery and works of the Prince of Wales.

The Highland Chief was located September 12, 1870. In the location notice the lode is described as "commencing at the discovery stake and running 600 feet in a *southerly* direction, and 600 feet in a *northerly* direction therefrom. * * * Situate about five or six hundred feet *westerly* from the Young Columbia and Wandering Boy lodes, Big Cottonwood district, Utah Territory."

A location 500 or 600 feet westerly from the Wandering Boy lode would exclude the premises now in controversy.

The diagram of the Highland Chief, attached to its application for patent, represents the Prince of Wales and Wandering Boy lodes as lying to the east of the premises claimed by the Highland Chief. The application and publication notice both allege that "from discovery shaft the lode extends northeasterly six hundred (600) feet and southwesterly therefrom six hundred (600) feet. There are no known adjoining claimants at either end. The nearest known claims being the Prince of Wales and Wandering Boy mines, *on the easterly side of said lode.*"

Under such an application and published notice it is very clear to my mind that the applicants had no right to go to the eastward so as to take in and appropriate the mines which they allege are on the "easterly side" of their lode. The object of requiring notice to be given by publication is to inform all parties, who may have an adverse interest, of the premises sought to be acquired, so that they may appear and assert their rights. If the notice describes premises in which others have no interest, then such other persons may safely neglect to appear and set up any claim. They are bound by the notice, and if they neglect it, they must do it at their peril; but the moment they find that the notice does not ask for anything in which they have an interest, that moment they may safely sleep, if they please. They are not bound, and should not be bound, to look after subsequent proceedings for fear that there may be a subsequent claim set up to their property. There can be no subsequent claim that varies materially from the original one, which is embodied in the application and publi-

cation. The law must be followed. The proceeding is a special statutory proceeding, and all the provisions of the law must be carefully, and, as some authorities say, strictly pursued. Actual notice without publication will not answer. Written notice would not be sufficient, because the statute says that there must be notice by publication.

If the published notice described certain premises, none other can be afterwards claimed and appropriated without a new application and new published notice, and if there should be a subsequent effort to include premises other than those included in the original application and notice, and an adverse claimant should appear and assert his claim to the new premises thus sought to be appropriated, and should fail in maintaining his claim, either by reason of not filing the same in time or for defect in form, he would not, in my opinion, be thereby in any worse position than he would have been if he had not appeared at all. In this class of cases consent cannot give jurisdiction. It is a substantial compliance with the statute which alone can give jurisdiction.

As we have seen, the location, application, and published notice of the Highland Chief severally excluded the premises of the Prince of Wales, now in controversy. It further appears, from the testimony on file, that the owners of the Highland Chief, in the early stages of their proceedings for patent, did not intend to include the Prince of Wales mine.

Mr. Stevenson, who was the surveyor that made their original diagram, testifies that he was instructed to avoid the Prince of Wales, and that he did so. There is nothing in the case that indicates any intention on their part to appropriate it until after they discovered that the final survey might be construed to include it, and they had succeeded in excluding its adverse claim. I think it was error to include it in their patent.

THE WANDERING BOY.

This mine was located and recorded August 6, 1870, and before the Highland Chief. Its owners have made an application like that of the Prince of Wales. The Highland Chief crosses their surface-ground, and they ask that proceedings may be commenced in the name of the United States to set aside its patent. From what has already been shown it appears that the Wandering Boy was excluded from the location, and application and notice by publication of the Highland Chief, and for these reasons it also should have been, but was not, excluded from the patent to the Highland Chief.

I am therefore of opinion that the applications of the Prince of Wales and Wandering Boy should be granted, unless the applications made by Schenck and Mundy to set aside their patents should be granted, and I will proceed to consider them.

THE PRINCE OF WALES.

To this claim it is objected that its location is void for uncertainty. The notice of location is as follows:

"The Prince of Wales lode.

"Discovered by Thomas E. Owens, August 1, 1870. We, the undersigned, in company and undivided, claim 1,200 feet on the above lode or mass of ore, or whatever it may contain, 200 feet for discovery

and 1,000 feet for location along this vein, wherever it may run, together with all dips, spurs, angles, and variations, with all the privileges granted by the laws of the district, and the Congressional laws of the United States. This lode is situated on the right-hand fork of the creek known as Silver Fork, within about 200 feet in a southeasterly direction of the lode called the 'Antelope,' in Big Cottonwood cañon, and now supposed to run in a southwesterly and northeasterly direction.

"*Discovery*—Thomas E. Owen, 400; H. W. Bishop, 200; T. Robinson, 200; J. J. Dussain, 200; H. Burnette, 200."

In considering the question now presented it should be borne in mind that the discovery of lodes, and the preparation of location notices for the same, are generally made by unlettered men, and it would be productive of great hardship, and perhaps generally result in an entire loss of their valuable discoveries, if they were held to technical accuracy in their notices of location. Accordingly it has been uniformly held by the courts and this Department, that extreme liberality should be shown to these notices, and if they were sufficiently certain to put an honest inquirer in the way of ascertaining where the lode was, that was sufficient. I think the present notice is reasonably certain, and that its locus could be found from the description given.

It is much more certain than many locations that have been carried into patent even when contested.

2. It is objected that the application for patent and the final survey and patent do not conform to the original location.

That parol evidence is admissible to aid in the location of a mining claim and define what tract is embraced in a location, is well settled. (Com'r G. L. O., Instructions of Nov. 20, 1873; Kelly *vs.* Taylor, 23 Cal. 14.)

The testimony of four deputy mineral surveyors, and four others, their attendants, has been filed in this case, and shows that they have made a careful survey of the premises, and find that the location, application, and patent are for substantially the same premises. These persons have the means of knowing, and have no motive that I can see for misstating the facts. This objection, I think, is not supported by the weight of the evidence, and is therefore overruled.

3. It is objected that the proof of publication of the notice of intention to apply for patent was published *from* January 6, 1871, *to* April 6, 1871, a period of only eighty-nine days, including both the first and last days of publication.

One of the vices of this objection is, that assuming the facts as stated, and the publication was for 90 days instead of 89, that raises the vexed question whether the first or last day, or either, should be excluded in the computation; and upon that point the authorities are numerous on both sides, although it is the rule of this Department that the first should be excluded. (Eureka case.) But this objection, if made at all, should have been made before patent, and it is too late to make it after the patent has issued. (Curtis on Pat. §274.)

4. It is also objected that the proof of posting the notice and diagram on the claim does not show when, where, or for what period the same was posted.

The counsel who make this objection refer to the affidavit of John Dobbie and George Murray to sustain the same.

These persons both state "that of their own certain knowledge they are aware that a certain diagram was and has been posted *for the period of ninety days*, subject to the inspection of all whom it may concern, upon that certain mining ground lying, being, and situate in Silver Fork, Big Cottonwood cañon, Big Cottonwood mining district, Salt Lake county, Territory of Utah, and known and recorded as the Prince of Wales lode; and that said diagram is a true and correct copy as made from survey of said ground, and now on file in the land office in Salt Lake City, said survey and diagram having been filed for the purpose of securing and obtaining a United States patent for the premises as hereinbefore mentioned, viz., 'The Prince of Wales, by Thomas Butterwood,'" etc.

This affidavit is not as specific as it should have been as to *when* the period of ninety days commenced, but the objection should have been made before patent.

5. It is objected that the applicants for patent did not have the title to the claim at the time the application was made, and that they did not acquire it for some time thereafter, and that therefore their application was absolutely null and void.

It is clearly shown that they acquired title in due form by conveyances before the patent issued. It is not shown that they had no interest in the claim at the time the application was made, but on the contrary it is alleged by counsel that they had contracts for conveyances before the application was made. This is highly probable. It is extremely improbable that business men would commence an application of this kind without having any interest in the premises or mine claimed.

If they acquired full title, as they did before the patent issued, it is not void, and the irregularity is not such as would justify commencing proceedings to set aside the patent.

6. It is further objected (and this is the last objection insisted upon) that the application for patent was made by Thomas *Butterwood et al.*, but that the final certificate of entry was issued to Thos. *Butterfield et al.*, and that as the patent issued to Thomas Butterwood *et al.*, it is illegal and void.

Thomas Butterwood was, without the possibility of a doubt, the true name of one of the applicants. His name and his genuine signature appear frequently in the papers. There is nothing to show that he ever transferred or pretended to transfer his interest to Thomas Butterfield. The officer in issuing the final certificate, by inadvertence and mistake, issued it to Thomas Butterfield *et al.*, when he intended to issue it to Thomas Butterwood *et al.* I entertain no doubt upon this point, and I am equally clear that this clerical error ought not to, and does not, affect the validity of the patent.

THE WANDERING BOY.

1. It is objected that the location and application for patent and final survey do not agree.

The notice of location is as follows:

"The Wandering Boy Lode.

"Notice is hereby given that we, the undersigned, claim fourteen hundred (1,400) feet on this lode, lead, or mass of ore for mining purposes, supposed to run in a northeasterly and southwesterly direction,

situated about three hundred feet east of the Antelope, in the head of Silver Fork, Big Cottonwood cañon, Big Cottonwood mining district, claimed with all dips, spurs, angles, variations, metals, and minerals along the course of the ore wherever it may extend, together with all the privileges granted by the laws of the United States and the local laws of this district. Located August 6th, A. D. 1870. To be held jointly and undivided, discovery included. Claim 900 feet up the hill, and five hundred feet down the hill from discovery.

"W. S. Hullinger, John M. Davis,
"L. B. Clements, H. C. Hullinger,
"A. Livingston, A. D. Hullinger,
"Wm. McGhie."

The application for patent describes the premises as follows:

"We * * * do claim fourteen hundred (1,400) feet in length by eighty-five (85) feet in width on the Wandering Boy lode, (being a silver-bearing vein of rock in place,) and the land and premises appertaining to said mine, * * * the location and extent thereof being more fully described as follows, to wit:

"The discovery shaft is N. 17°, E. 1,928 feet from U. S. mineral monument No. 1, and about 70 feet southerly from the main shaft of the Prince of Wales lode at the head of Silver Fork cañon; thence S. 69°, W. 300 feet; thence S. 51° 30′, W. 200 feet to the southwesterly end of the vein, the shaft of the Highland Chief mine bearing north-westerly; return to discovery shaft; thence N. 69°, E. 280 feet to summit of divide between Silver Fork and Honey-Comb cañons; thence N. 34° 30′, E. 620 feet to north-easterly end of mine."

In this case, as in the Prince of Wales, resort has been had to parol evidence to determine the location of the claim. Four deputy mineral surveyors and their four attendants swear that the location, application for patent, and final survey are for substantially the same premises, and I find from the testimony that their statements are true, and I therefore overrule this objection.

2. It is objected that the proof of publication does not state the last day of publication, and therefore does not show that the law was complied with.

The affidavit of Frank Kenyon, editor of the paper in which the notice was published, states that "the attached notice was published in the *Salt Lake Review for a period of ninety days*, commencing August 15, 1871." I think this was sufficient *prima facie* proof. The objection is overruled.

3. It is objected that the notice and diagram were not posted on the claim until five days after they were filed in the land office, and five days after the publication had been commenced.

The proof shows that they were posted on the claim for more than ninety days, commencing on the 20th day of August, 1871. They should have been posted before the publication, but the omission was an irregularity only, and was not fatal.

4. It is alleged that upon a survey including an area of two acres an entry was made, and the two acres paid for, and that subsequently the survey was modified so as to include an area of 2 75-100 acres, and that a patent issued in accordance with the modified survey, without correction of certificate or payment for the ¾ of an acre.

This would result in depriving the Government of five dollars.

Perhaps it would be sufficient to answer *de minimis non lex curat;* but as I understand the matter, the final survey, after deducting the premises belonging to the Prince of Wales and paid for by it, will leave just about two acres, which was the amount paid for by the Wandering Boy.

5. It is alleged that the patent issued without proof that the original locators were citizens of the United States.

It is not claimed that there was proof that the applicants for the patent were not citizens.

It has not been the practice of the Land Office to require proof that the original locators were citizens, except in those cases where they were the applicants for patent. It will not be presumed that they were not citizens, in the absence of any allegation or objection before the issuing of patent to that effect. After patent has actually issued, it is too late to make this objection. (Kempton case.)

6. It is objected that the patent illegally recites that the prior patent for the Highland Chief for the premises in conflict was inadvertently and erroneously issued.

I think that the patent to the Highland Chief for said premises did inadvertently and erroneously issue, and that it was proper to recite that fact and issue another patent to the Wandering Boy for said premises (Stark *vs.* Starrs, 6 Wall., 402; Henshaw *vs.* Bissell, 18 do., 264). But as counsel for the Highland Chief strenuously contend that a second patent cannot properly issue, and as there can be no question about the right to proceed in the name of the United States to set aside a patent improperly granted, I have concluded to request the Attorney-General to institute such suits in behalf of the Prince of Wales and Wandering Boy.

I will notice, in passing, the objection that has been urged to the application in case of the last-named mine, on the ground that Moore & Co. had transferred all their interest in the mine to Walker *et al.* before this application was made.

I find from the exhibits before me that Moore & Co. still have some interest in seeing that the patent to the Wandering Boy is unclouded, and I think that interest sufficient to support their application.

THE ANTELOPE LODE.

The location of this lode was made on the 15th of June, 1870, and recorded June 18, 1870. It was as follows:

The Antelope Lode.

June 15, 1870. Miner's Notice.

We, the undersigned, claim (3,000 ft.) three thousand feet in this ledge or lode, with all its dips, angles, spurs, and variations, to be known as the Antelope lode. Also (200 ft.) two hundred feet discovery, running (1,000 ft.) one thousand feet easterly, 2,000 westerly direction, situate at the head of the first south fork below mill known as Mill F, in the right-hand fork of said fork.

Discovery.

Levi H. North, Levi North, C. A. North, H. B. North, Marari North, E. H. Williams, H. B. Fuller, A. L. Fuller, R. Miller, A. Ivins,

John M. Cook, John Cook, Wm. H. Homer, A. J. Alexander, W. S. Hullinger.

The application for patent was made on the 30th of December, 1873. Publication was made in the Salt Lake *Tribune*, commencing on the 4th of January, 1874. Messrs. Schenck and Mundy, the owners of the Wellington lode, filed, on the 4th of March, 1874, an adverse claim.

The case was heard by the Commissioner of the General Land Office in June, 1874, the parties being permitted to make oral and written arguments. On the 18th of August, 1874, the applicants for patent of the Antelope lode filed in the General Land Office an abandonment in writing of all that portion of their claim covered by the adverse claim of the Wellington. The Commissioner thereafter treated the Wellington claim as out of the case, and thereupon informally decided that the applicants were entitled to patent, and on the 26th of August, 1874, a patent was issued for the Antelope lode, excluding the premises claimed by the Wellington. No notice of this decision was given to the owners of the Wellington or their attorneys. They claim that they should have had notice, and that they had the right of appeal to the Department, which right had been cut off by the neglect to give them notice and by the issuance of the patent. They allege that they desired to appear and protest against the issuing of patent to the claimants for sundry reasons, showing that the applicants had not fully complied with the law. They instance the following: That their location notice did not describe their claim as minutely as the local laws required, in that it did not name the starting point, and did not show that the locators marked their claim with stakes or hillocks, with the names of the claimants on a distinctly written notice; that they failed to show that the locators had done twenty-five dollars' worth of work within ten days after recording their claim; that they failed to show that one of the locators (not one of the applicants) was a citizen of the United States; that the requisite amount of improvement and expenditure was not done on the claim, but was done on another—the Prince of Wales; that the notice and diagram were posted on the Prince of Wales instead of the Antelope; that they failed to show that the publication notice was given in a paper designated by the Register; that no final survey of the claim, as patented, was made; that the claim was floated; and, over all and above all, that the filing of the adverse claim required that *all proceedings* should be suspended until after the judgment of the court had been rendered.

The Antelope lode, as originally located, covered a portion of the premises afterwards included in the patent to the Prince of Wales. Those portions of the claim not so included, and perhaps others, were patented to the Antelope claimants.

That there were irregularities in issuing the patent for the Antelope, I shall not deny. Some of them were of trivial importance and others of a more grave character.

The question now presented is whether they were such as to require this Department to institute proceedings to set aside the patent. If any person was wronged by the issuing of the patent, it ought to be set aside.

If there are no adverse interests, then it seems to me that there is no good ground for interference with the patent. There is no pretence

that any adverse interests have been injuriously affected except those of the Wellington claimants. It is argued that they have good ground to complain, that the 7th section of the act of May 10, 1872, required that all proceedings shall be stayed until the suit brought by the Wellington claimants has been acted upon by the courts.

This claim will require a careful examination of the statute and of the spirit or reason for the same.

The 7th section is as follows:

"That where an adverse claim shall be filed during the period of publication, it shall be upon the oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim; and all proceedings except the publication of notice, and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment, and a failure so to do shall be a waiver of the adverse claim. After such judgment shall have been rendered, the party entitled to the possession, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the Register of the land office, together with the certificate of the Surveyor-general, that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the Receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceeding under the judgment-roll shall be certified by the Register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim or such portion thereof as the applicant shall appear from the decision of the court to rightfully possess. If it shall appear from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Surveyor-general, whereupon the Register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights." * * *

This section expressly provides that when an adverse claim has been filed in the manner therein pointed out, "all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived." It requires the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to *determine the question of the right of possession to the premises* claimed adversely, and to prosecute the same with reasonble diligence to final judgment, and a failure so to do shall be a waiver of the adverse claim.

The object of this provision evidently is to *protect* the rights of the adverse claimant in the disputed premises and to determine the right of possession thereto, and to prevent the Land Department from issuing a patent for the premises in dispute to the wrong party.

Now, if the applicant for patent comes forward and says to the Land Department, "I concede that the adverse claimant has the better right, and I hereby give up all claim to the premises in controversy, and consent that they shall be excluded from my patent and included in the patent to the adverse claimant," what is to be gained by continuing the suit?

If it should proceed to final judgment it could only determine that the adverse claimant had the right of possession to the matter in dispute.

That result has already been accomplished by the waiver on file in the Department. It is true that the words of the statute have not been *literally* followed, but the spirit has, and *hæret in litera, hæret in cortice.*

This principle has been well expressed by a learned court in the following language:

"It frequently becomes the duty of courts, in order to give effect to the manifest intention of the statute, to restrain, or qualify, or enlarge the ordinary meaning of the words that are used. The intention of the law-makers may be collected from the cause or necessity of the act, and statutes are sometimes construed contrary to the literal meaning of the words. It has been decided that a thing within the letter was not within the statute unless within its intention. The *letter is sometimes restrained, sometimes enlarged, and sometimes the construction is contrary to the letter.* (4 Bac., Title Stat. 1, §§ 38, 45, 50; Burgett *vs.* Burgett, 1 Ohio, 221.)

And again: "Courts are not to be confined to the letter of the law in giving a construction. The maxim, *hæret in litera, hæret in cortice,* is not to be forgotten. A statute must be construed with reference to the subject-matter of it, and its real object and true intent." (Spicer *vs.* Gesleman, 15 Ohio, 341.)

It seems to me that this Department is not required to await the action of the court when the thing to be accomplished by the action of the court has already been accomplished by the full admission of the adverse claim in the land department.

The abandonment in writing is a confession in favor of the adverse claimant, and if he should desire the benefit of a formal judgment of the court he has but to file therein a certified copy of the abandonment to obtain a judgment by confession.

I do not agree with the construction of this 7th section insisted upon by counsel for the motion. The only matter that could be legally presented to the court would be such as related to the premises in controversy. It would have no power to adjudicate upon anything else, and if it should undertake to do so its judgment in that regard would be *extra vires* and void. The mere fact of bringing the suit by the adverse claimant and obtaining a judgment in his favor does not necessarily give him a right to a patent by filing a certified copy of the judgment-roll and the certificate of the surveyor-general, and paying for the land and paying the fees. He may commence his suit immediately, and before the publication of notice has expired, during which other adverse claimants are allowed to file their claims. The statute requires that the publication of notice shall continue and shall not be stayed. If during its publication other adverse claimants should appear and file their claims, after the suit has been brought by the first adverse claimant, it is very clear that the judgment in favor of the first

applicant would not give him the right to a patent upon filing a certified copy of the judgment-roll, etc., and yet he would have complied with the letter of the law. It would be necessary for him to make all of the other adverse claimants parties to his suit before he could, as against them, claim the benefit of the statute. He could not in any other way satisfy the spirit of the statute, though he might the letter.

In the case under consideration the Wellington claimants will be deprived of no affirmative rights. They may go on with their suit and obtain judgment, and file a certified copy of the judgment-roll, etc., and obtain their patent, but it will be for the premises in controversy only, and not for their entire claim. Congress, in my opinion, never intended that a patent should issue for any mineral lands where an application for patent had not first been advertised and notice given. If the Wellington claimants, by virtue of having filed their adverse claim to the Antelope, would be entitled to a patent for their entire claim, then they would acquire a patent for premises for the greater portion of which no notice of application had ever been given. A construction that would result in such consequences is wholly inadmissible.

I overrule the application to commence proceedings to set aside the patent for the Antelope lode. I shall request the Attorney-General to institute proceedings in the name of the United States to set aside and cancel so much of the patent to the Highland Chief as conflicts with the patents heretofore issued to the Prince of Wales and the Wandering Boy.

I have given to the many questions involved in this case all the consideration which my time would permit, and the conclusion which I have reached will result in bringing into court the owners of the Highland Chief, where they will have full opportunity to protect all their rights.

ERROR IN DESCRIPTION OF LAND CONVEYED BY A MINING PATENT.

Commissioner Burdett to Register and Receiver, Sacramento, California, June 22, 1875.

Mr. Harkness' said placer claim is erroneously described in said patent. It also appears that the said patent has been recorded in the Recorder's Office of Placer county, Cal.

I return said patent herewith, and you will inform Mr. Harkness that a new patent will issue to him for his said claim upon the receipt at this office of the inclosure, with a relinquishment endorsed thereon to the United States of the premises therein described, together with a certificate of said Recorder that said relinquishment has been duly recorded in the records of his office.

The relinquishment should state that the same is made for the reason that the premises are erroneously described in said patent. The Recorder's certificate should also state as to whether or not his records show any conveyance of said premises.

If Mr. Harkness has conveyed said premises to any other person, it will be necessary for him to cause an abstract of such conveyances to be made, certified to by said Recorder, and accompanied with a relinquishment from the parties named in said conveyances, and to forward the same with the inclosure (the patent) to this office.

COLORADO RELOCATIONS.

Commissioner Burdett to Register and Receiver, Central City, Colorado, June 24, 1875.

In all cases of applications for patents for mining claims which are based upon relocations under provisions of the territorial act of February 13, 1874, you will require the applicants to file with their application for patent a copy of the original notice of location of the mining claim for which patent is sought, a complete abstract of conveyance from the original locator to the parties making the relocation, and a copy of the relocation notice, together with an abstract of the conveyances from said relocators and their grantees to the applicant for patent.

LIMESTONE AND MARBLE.

Commissioner Burdett to H. C. Rolfe. San Bernardino, Cal., June 28, 1875.

Lands which are more valuable on account of deposits of limestone or marble than they are for purposes of agriculture may be patented under the mining acts of Congress.

KAOLINE.

Commissioner Burdett to J. D. M. Crockwell, Salt Lake City, Utah, June 28, 1875.

Lands containing valuable deposits of kaoline may be patented under the mining acts.

WHAT IS CONVEYED BY PLACER PATENTS—EXCEPTING CLAUSES IN PLACER AND AGRICULTURAL PATENTS—KNOWN MINES DO NOT PASS WITH AN AGRICULTURAL PATENT.

Commissioner Burdett to Hon. H. F. Page, Placerville, Cal., July 29, 1875.

Placer patents, except those issued under the provisions of the 11th section of the mining act, contain an excepting clause, as follows, viz: "That should any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit, be claimed or known to exist within the above-described premises at the date hereof, the same is expressly excepted and excluded from these presents."

By the terms of the act a patent for a placer claim conveys "all valuable mineral and other deposits within the boundaries thereof," if no veins or lodes are claimed or known to exist within the exterior limits of the claim patented at the date of patent. In cases existing under the said eleventh section, the same excepting clause is inserted with this exception, the word "other" is inserted after the word "any."

In all agricultural land patents the following clause is inserted, viz: "Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to

penetrate or intersect the premises hereby granted, as provided by law."

No title to a mining claim can be secured under an agricultural land patent. (*Vide* section 2258, Revised Statutes.)

HEARINGS.

To determine the character of land.

Commissioner Burdett to Register and Receiver, Pueblo, Colorado, August 14, 1875.

It is observed that the published notices of hearings to disprove the mineral character of land in your district are signed by the applicants themselves, who appear to make their own arrangements for hearing testimony and publishing notces.

This is not the correct practice.

The notice of the hearing should be prepared by the local officers and signed by them, in order to secure a correct description of the land and to insert the names of mineral affiants, should any mineral affidavits covering the land applied for be on file in your office.

You should designate the paper of general circulation near the land in which to publish the notice, and in all cases where practicable, the hearings should be held before you. Where distance or other good cause renders it advisable, you should designate an officer using a seal, or other person authorized to administer oaths, whose character is known to you, residing near the land, as the proper person before whom the hearing shall be held.

The testimony submitted should be as far as possible by questions and answers, and the officer by whom the testimony is taken should endeavor to elicit full information as to the mineral and agricultural qualities of each ten-acre tract of the claim.

SEVERAL LODE CLAIMS CANNOT BE EMBRACED IN ONE APPLICATION.

Commissioner Burdett to Register and Receiver, Helena, Montana, August 17, 1875.

Several lode claims separate in their inception should not be embraced in one application for patent.

The slight saving in expense does not compensate for the delays in furnishing satisfactory proofs in the several claims sought to be patented, and the practice of including several lodes in one application should not be encouraged.

This decision does not apply to placers which embrace several lodes within the boundaries sought to be patented (*vide* section 11 of the act of May 10, 1872, Revised Statutes, section 2333), or to consolidated claims on the same vein or lode.

RIGHTS OF FOREIGN CORPORATIONS UNDER UNITED STATES MINING PATENTS.

Commissioner Burdett to Register and Receiver, Central City, Colorado, Oct. 8, 1875.

This office is in receipt of a letter from William W. Ramage, agent and manager for the assignees of J. W. Haseltine *et al.*, patentees of the Searle lode, wherein he states that you refused to allow him to file

a plea against the application of Joshua S. Reynolds, for patent for the Aduddell lode, on the ground that said assignees were a foreign corporation.

To prevent misunderstanding on this important question, I have to call your attention to section 2,326 of the Revised Statutes, wherein the following language is used: "Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever." A foreign corporation purchasing a patent issued to citizens of the United States, takes all the rights, and is entitled to all the privileges that would have accrued to the original patentees, had they retained their interest in the mine. You will therefore treat the agent of such foreign corporation precisely as you would the patentee, so far as rights are concerned under the United States patent.

Ordinarily, a few words of explanation will convince the holder under a patent, that a plea or adverse claim is unnecessary where a survey for another lode crosses his own premises, as the ground in conflict is already patented to him, and will be excepted from the patent issued under the subsequent application. Should the patentee persist in filing an adverse claim, you will receive it, and give him the usual notice in writing that the same is rejected on the grounds above recited; when he may appeal to this office if he desires to do so.

But this is not an ordinary case. From the letters of Mr. Ramage, it appears that the premises conveyed by the patent to the Searle lode, are incorrectly described therein; that the land conveyed lies considerably east of that claimed by his assignors. It becomes his duty, therefore, to protest against the issuance of a patent on a conflicting survey until a second patent is issued for the Searle lode, correctly describing the claim. You are therefore directed to receive such plea or protest as Mr. Ramage may desire to file in the Aduddell application, and transmit the same to this office, with the other papers in the case, after the entry has been perfected, as usual.

MILL SITES AND TIMBER.

Commissioner Burdett to E. T. George, Lander County, Nevada, Oct. 21, 1875.

Mill sites may be located under the provisions of the mining act, and if located should be recorded.

Locators of mining claims, their heirs and assigns, have the exclusive right of possession of the surface ground included within the lines of their locations, upon compliance with the laws of the United States and with the state, territorial and local regulations governing their possessory titles, where no adverse claim thereto existed on the 10th of May, 1872.

The parties having the right of possession to the surface have also the right of possession to the timber growing thereon.

EQUATOR LODE.

Fourteen hundred feet on a lode in Colorado were located by three persons Oct. 31, 1866; re-located June 11, 1867, by the same parties, with sixteen hundred feet additional, and the three thousand feet re-located Sept. 7, 1869, by fourteen persons: *held*, that the last location was good, and the applicants being the assignees of the first, second and third locators, have a good title.

An adverse claim to be considered must be filed during the period of publication.

An error in the description of a claim making the published notice inconsistent with itself, should put an adverse claimant on his guard, and will not be deemed fatal unless it is capable of misleading.

A conflicting survey, already patented, cannot as an adverse claim delay an application for a patent, but the ground in conflict will be excluded from the subsequent patent.

Commissioner Burdett to Register and Receiver, Central City, Col., October 26, 1875.

On the 14th May, 1869, the Equator Mining and Smelting Company filed in your office an application for patent for fourteen hundred linear feet of the Equator lode, Col.

Against this application for patent the Bowman Silver Mining Company filed an adverse claim on the 11th August, 1869, and withdrew the same on the 15th July, 1874.

On the 13th August, 1869, Samuel I. Nash *et al.* filed an adverse claim against said application, but as the same was not filed within the period of publication of notice of intention to apply for a patent, the same cannot be considered.

On the 20th April, 1875, the Marshall Silver Mining Company of Georgetown, by its attorney, William A. Arnold, filed a protest against said application for patent, for the following reasons:

1st. That said applicant has not the title to said fourteen hundred feet of the Equator lode.

The copies of the location certificates of the Equator lode show that on the 28th July, 1866, John Turck and two others discovered said lode and made record of their location on the 31st October, 1866, claiming 1400 feet. On the 11th June, 1867, the same parties located 3,000 feet of said lode, and made record thereof.

In the location notice and record it is stated that "said lode was discovered in July, 1866, and recorded under the territorial law in October."

On the 30th July, 1867, the two parties who had joined with John Turck in the location of this lode, sold their interests to John J. Simmons, Henry H. Porter, and William O. Carpenter.

On the 7th September, 1869, Turck, Porter, Simmons, Carpenter, and ten others, located three thousand feet of said lode and made record of such location.

All the locators hereinbefore referred to, and their grantees, had conveyed all of their respective interests to said company prior to the application for patent.

The company's title by the record is shown to be perfect.

No one could have been misled by this notice. If in any doubt in regard to the length of the claim, a party could satisfy himself upon this matter by calling at the local office; for the same notice which contained this discrepancy stated "that the claim is more fully described upon the diagrams and notices thereof filed this day in this office." (The local land-office.)

The diagram and notice posted in the Register's office are posted upon the same sheet of paper.

The sum of the distances along the vein as shown upon the diagrams, to wit: 178½, 350, and 871 feet, is 1399½ feet.

The notice states that the claim is "fourteen hundred feet in length," and gives the courses and distances along the vein.

The sum of the distances given in the notice, to wit: 187½, 350, and 871½ feet, is *fourteen hundred and nine feet.*

The smallest number of feet called for in either the notice, diagram, or published notice, is *thirteen hundred and ninety-nine and one-half feet.*

The claim as finally surveyed along the centre line is *thirteen hundred* and ninety-nine and four hundred and seventy-five thousandths feet, or twenty-five thousandths of a foot less than the smallest number of feet called for in either of said documents.

2d. It is objected that the survey made for the Equator lode embraces two hundred square feet of the surface ground embraced by the survey made for the Reynolds lode.

No adverse claim was asserted by the Reynolds lode claimants against the application for patent for the Equator claim within the time prescribed by law, and none can be considered filed after the expiration of the period of publication.

3d. It is objected that the published notice, the diagram, and the notices posted upon the claim and in the Register's office, do not agree.

Each one of these papers describes the claim as commencing at a point south 49° west from the shaft upon the Winnebago Lode at the distance of fifty-six and one-half feet; the *courses* agree in all these papers. The application for patent, the notices posted and published, all give the length of the claim as fourteen hundred feet.

The published notice, after giving the length of the claim as fourteen hundred feet, describes the premises as commencing 56½ feet S. 49° W. from the Winnebago shaft. Thence S. 49° W. *eighteen hundred and seventy-two feet.* Thence S. 51° W. 350 feet, thence S. 54° W. 871½ feet to "western boundary, embracing a surface claim of 70,000 square feet, and is more fully described upon the diagrams and notices thereof filed this day in this office, and to be posted upon the claim itself."

The sum of the distances as given above, along the vein, to wit: 1872, 350, and 871½ feet, are *three thousand and ninety-three and a half feet,* although in the same notice it is stated that the claim is only *fourteen hundred feet in length.*

I am of the opinion that sufficient notice was given in this case.

On the 31st of May, 1875, Wm. P. Linn, by his attorney, Wm. A. Arnold, filed a protest against said application, for the reason that the survey of the Equator claim conflicts with and embraces a portion of the survey made for the Colorado Central Lode.

It appears from the records of this office that an application for patent for the Colorado Central Lode was filed in your office on the 7th February, 1873, and that an adverse claim was filed against the same by the Equator claimants.

It also appears that the Equator claimants were nonsuited upon the trial of the suit brought upon said adverse claim.

On the 21st July, 1875, patent issued for the Colorado Central Lode.

When patent issues for the Equator claim, it will be necessary to insert in such patent a clause excepting from the conveyance the surface ground already patented to the Colorado Central claimants.

You will, upon the receipt hereof, allow the entry of said Equator claim, and forward the Register's certificate of entry and the Receiver's receipt to this office.

PLACER MINE.

An unincorporated association of citizens owning separate and distinct interests in a placer mine may unite their means, and expend the five hundred dollars required by the mining laws at one point, and thereafter secure patent from the United States. Certain proofs required under the mining laws detailed.

Commissioner Burdett to Register and Receiver, Elko, Nevada, October 28, 1875.

With your letter of the 11th ultimo, you submitted the papers in case of the application of Dudley Chase and nine others for patent for certain placer mining ground.

It appears from the papers in the case, that the several applicants own separate and distinct interests; that the said applicants are an association of persons unincorporated; that the required amount has been expended upon this claim at the joint expense of the several members of said association,

An application for patent may be filed by an association of two or more persons owning divided or undivided interests in the premises for which patent is sought, and where the required improvements have been made upon the premises described in the application, jointly by the several owners, the said association of persons may receive patent therefor, upon full compliance with the law and instructions.

In the case under consideration, you will call upon the applicants to furnish the following additional evidence:

1st. The affidavit of the applicants as to whether or not any known veins or lodes of gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, exist within the exterior boundaries of said premises. If any are known to exist, their names must be given, and the affidavits must show that no other known veins exist within the said premises other than those named.

2d. The applicants must file an abstract of conveyances from the original locators to the present applicants, properly certified to by the Recorder.

Copies of the several locations have been filed.

3d. Evidence must be filed to show that Thomas M. Lucus, before whom some of the proofs submitted were verified, was a justice of the peace.

PROCEEDINGS WHERE PART OF A MINING CLAIM IS IN ONE LAND DISTRICT AND PART IN ANOTHER.

Commissioner Burdett to Register and Receiver, San Francisco, Cal., November 12, 1875.

In all cases where mining claims lie partly in one land district and partly in another, applications for patents therefor should be filed in that district where the principal workings of the claim are situated, as shown by the plat and field notes; and the diagrams and notices should be posted near to such workings. A copy of the notice and of the diagram should be posted in the Register's office in each district.

The notice posted in the office of the Register where the *application for patent is not filed*, should state where the application for patent for the premises therein described has been filed, and the date of the filing of such application.

PORTERFIELD WARRANT.

Porterfield Warrants cannot be located on lands appropriated by law, or which exceed in price $1.25 per acre.

Title to land, in this case, did not pass with the patenting of an improper location of a Porterfield warrant; for a mining claim was located thereon at date of location, and the land was not subject to location with said warrant.

Rightful owners of this mining claim will be allowed to secure patents for their mine upon compliance with the mining law.

Commissioner Burdett to A. V. Weise, Salt Lake City, Utah, December 1, 1875.

The act of Congress approved April 11th, 1860, entitled "an act for the relief of the legal representatives of Charles Porterfield, deceased," authorized the issuance of warrants equal to six thousand one hundred and thirty-three acres of land, to be by them located upon any of the public lands which have not been otherwise appropriated at the time of such location within any of the States or Territories of the United States where the minimum price for the same shall not exceed the sum of one dollar and twenty-five cents per acre."

From the foregoing it will be seen that Porterfield scrip could not be located upon any land which had been regularly appropriated by virtue of the provisions of law for its disposition. Nor upon land the minimum price of which exceeded one dollar and twenty-five cents per acre.

It appears from the records of this office that on the 2d April, 1873, Henry Carrigan located Porterfield warrants, No. 93 upon the N. W. ¼ of S. W. ¼, Sec. 20, T. 25 S., R. 6 W., Utah, and No. 94 upon the S. W. ¼ of S. W. ¼ of said section.

Patents issued to said Carrigan for said tracts on the 13th June, 1873.

In your letter you state that you are the grantee of the parties who purchased Carrigan's interest in said tracts.

You also state that on the 10th of June, 1872, the Excelsior Sulphur Mine was located upon said tracts by J. M. Moore, *et al.*, and duly recorded; and that you now hold the said mine by purchase from the locators and their grantees.

In view of these facts, you ask whether you have government title to said mine.

This mining claim having been duly located and recorded in accordance with the provisions of the mining act of May 10, 1872, nearly a year prior to the location of said warrants, the land embraced by said mining location had been so appropriated that the same could not legally be located by said warrants. Aside from this, the land being mineral land, the minimum price of which exceeds one dollar and twenty-five cents per acre, could not be legally located by the said warrants.

No title was or could be obtained by said warrant locations, and the patents issued thereon will be cancelled upon their return to this office.

Should you, or other parties holding the possession and the right of possession to said mining land, desire to secure patents therefor, it will be necessary to proceed under the mining acts of Congress.

MICA.

The question, Can land, containing valuable deposits of mica enuring, if agricultural, to the Union Pacific Railroad, be patented under the mining law? was answered as below.

Commissioner Burdett to William A. Arnold, Central City, Colorado, December 3, 1875.

Lands containing valuable deposits of mica may be patented under the provisions of the mining act of May 10, 1872, upon full compliance with the law and instructions.

From the operations of the grants to the different railroad companies are excepted all *mineral lands*, except those containing coal and iron, and title to mineral lands can only be acquired under said mining acts.

HEARINGS—SURVEYOR'S RETURN.

Commissioner Burdett to Register and Receiver, Boise City, Idaho, Dec. 22, 1875.

In contests to determine the character of land, any person who has a knowledge thereof, whether he has an interest therein or not, is permitted to appear and testify in behalf of the surveyor's return.

TOWN-SITE OF CENTRAL CITY, COLORADO.

The following excepting clause will be inserted in patents for town-sites in mining regions, without mentioning by name or number any patented mining claim within such town-sites:

"*Provided*, that no title shall be hereby acquired to any mine of gold, silver, cinnabar or copper, or to any valid mining claim or possession held under existing laws, and *provided further*, that the grant hereby made, is held and declared to be subject to all the conditions, limitations and restrictions contained in section two thousand three hundred and eighty-six of the Revised Statutes of the United States, so far as the same are applicable thereto."

The town-site laws clearly contemplate towns and cities in mining regions, and permit town-site entries on mineral lands.

Mining claims within town-sites are patented with an excepting clause, as follows:

"Excepting and excluding, however, from these presents, all town-property rights upon the surface, and there are hereby expressly excepted and excluded from the same, all houses, buildings, structures, lots, blocks, streets, alleys, or other municipal improvements on the surface of the above described premises, not belonging to the grantee herein, and all rights necessary or proper to the occupation, possession and enjoyment of the same."

Commissioner Burdett to Register and Receiver, Central City, Colorado. December 23, 1875.

Town-site entry, No. 211, of Central City, made May 27, 1874, amendatory of entry No. 148, made May 16, 1873, has this day been approved, and patent will issue therefor in due course, but with a proviso in the following form: "*Provided*, that no title shall be hereby acquired to any mine of gold, silver, cinnabar or copper, or to any valid mining claim or possession, held under existing laws: and *provided further*, that the grant hereby made is held and declared to be subject to all the conditions, limitations and restrictions contained in section two thousand three hundred and eighty-six of the Revised Statutes of the United States, so far as the same are applicable thereto."

Section 2386, above quoted, is in the following words: "Where mineral veins are possessed, which possession is recognized by local

authority, and to the extent so possessed and recognized, the title to town lots to be acquired, shall be subject to such recognized possession, and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes, as against the United States."

On behalf of certain alleged mining interests, John A. Dix, Esq., *et al.*, protest against the issue of patent to the town unless the following exception, or one equivalent thereto, is inserted therein, to wit: "*Provided*, That no title shall be acquired under this patent to any mine of gold, silver, cinnabar or copper, nor to any surface ground over any such mine or within fifty feet on each side of the same throughout the length of the vein, which said surface-ground shall be reserved, and shall be sold to the mines for the special use and working thereof, at not less than —— dollars per acre."

I am of the opinion that this form of exception is objectionable, that it is not in conformity with law, and that its insertion would tend to cloud the title of the grantees under the town patent, without assuring or securing to mineral claimants the particular benefits or privileges evidently intended to be compassed by its terms. It is to be borne in mind that this office is not vested with a discretionary authority in the matter of the disposal of the public lands. It can neither grant without express authority of law, nor can it limit or qualify by form of conveyance, the substance, conditions or extent of the subject matter granted, save as the same may be authorized to be done by express legislation. The proviso proposed by this office to be inserted and above quoted, embraces by recitation and reference all that Congress has seen fit to enact by way of qualification in the matter under consideration, contains all of that to which appeal can be had, should the courts be applied to for the settlement of conflicting claims, and must therefore be held to be the limit of executive authority.

The town-site laws clearly contemplate that towns will exist in mining localities; by clear implication, town-site entries are to be permitted on mineral lands. This is indicated by the clause excepting title to mines from the title acquired by the town. It is inevitable that where the surface is suitable, it will, in a mining vicinity, be populated, and attain the character of a town or city. Where any branch of business flourishes, there capital and population will concentrate. The various trades and callings will centre there. Hotels will be a necessity. Dwellings will be built, and permanent homes established: all the various interests which constitute valuable property rights as connected with the soil will be created. And this is not necessarily antagonistic to the miners. The protection of municipal government is in the miner's interest, as it is in the interest of any other class of business men.

In the case of Theodore H. Becker *vs.* Citizens of Central City, Colorado, Becker was a mineral claimant to 3,000 linear feet of the Gunnell Extension or White lode, under act of July 26, 1866. He claimed compliance with the law, and was opposed by certain citizens of the town who represented that said lode extended to a considerable distance under town-lots and improvements owned and occupied by them in said city. In this case the Hon. Secretary of the Interior decided, August 7, 1871, that "In the present case the application for a

patent includes the surface and soil as well as the mineral. I am of the opinion that the persons in possession of this surface are adverse claimants within the meaning of this law, and are entitled to be heard in the local courts before a patent is issued." The exception in the mining patents, for claims within the exterior limits of a town, having in view the legality of the possession of the surface ground by the inhabitants, is as follows, to wit: "Excepting and excluding, however, from these presents, all town-property rights upon the surface, and there are hereby expressly excepted and excluded from the same all houses, buildings and structures, lots, blocks, streets, alleys, or other municipal improvements on the surface of the above-described premises, not belonging to the grantees herein, and all rights necessary or proper to the occupation, possession and enjoyment of the same." By this exception the surface in the actual possession and occupation of the mine owner, or covered by his improvements, is as distinctly assured and conveyed to him, as is that surface to which town-property rights have attached or on which improvements by other parties have been placed, excepted from his patent. I regard these correlative exceptions, inserted in the town-site and mineral patents, as securing the objects contemplated in the town-site and mineral laws. They assure to all parties just what, under the law, they are respectively entitled to claim. To grant to the miner the entire surface ground, along the whole line of the lode, with a width of one hundred feet, without regard to the acquired surface rights of others, would compel me to ignore the principle announced in said decisions of the Hon. Secretary, as well as to do violence to my own judgment of the proper construction of the two laws under consideration. They must be so construed that both may stand. Under the system established as aforesaid, of inserting said exceptions in the patents to towns and mine owners, there are no occupants in Central City presenting their claims adversely in the manner provided in the mining statutes, and for the reason that, by said exceptions, the rights of all parties are respected and so defined that they are easily susceptible of definite ascertainment. To except from the town patent definite surveys of mineral claims, initiated or extended after surface occupation by other parties, would obviously be ignoring, to an unjustifiable extent, adverse *rights* which have not been presented for adjustment by the courts, prior to the mineral entry, simply for the reason that under the practice of this office, indicated by said exceptions, it was wholly unnecessary. This non-action was based on the practice of this office, on which they had the right to rely, and no power to control, and this practice itself was based on the reasonable and essentially necessary construction of the town-site and mineral laws, whereby both might be executed, and claimants under them secured in such rights as they had respectively acquired. It should also be remembered, in this connection, that the government does not act upon the individual claims of town occupants, but does adjust and patent mineral claims directly to the mine owners.

The request of the mineral claimants, however, as presented in their protest and claim now under consideration, constitutes a proposition never hitherto before this office for decision. It is, in brief, that every mine discovered or hereafter to be discovered, throughout its entire length, with a width of one hundred feet, surface ground included, be excepted from the town patent.

Where and when will these mines be discovered and opened? What and whose property will they then embrace and practically confiscate? What foot of surface ground will ever be held by a town occupant under a clear title, where the same is not purchased from the mine owner? Was the mineral law designed by Congress as a repeal of the town site statutes? These points would assume vital significance were the present claim conceded.

The town of Central City was incorporated in 1864. The first patents were issued to mine owners in 1869. Precisely *when* mining claims attached to any particular piece of ground, I cannot determine. Precisely *when* a legal surface claim by a town occupant attached to any particular lot, I have no means of ascertaining. How, then, with deference to those laws under which these claims have attached, can I defer the one absolutely to the other?

The necessity of so construing both laws as not to defeat either; that respect for rights under each, which, of itself, it seems, must control my action; the fact that the exceptions in mineral patents secure a shield of protection to town occupants and mineral claimants alike, and on which town occupants have relied, and that the exception in the town-site patent is as broad as the law suggests, and almost in its exact language, render it improper for me to grant the present claim.

The mine owner is protected by the local rules and customs, and these are recognized by the United States. The town patent is executed to a trustee, who is controlled by the legislature of his State or Territory. The local courts are open for those particular adjustments which this office cannot reach; and I conclude that the present demand is entirely outside what, in the proper execution of said laws, can be legitimately claimed or conceded. I therefore decline to grant the application; and in conformity to the views herein set forth, I hereby revoke my letters to the Register and Receiver, of August 26th, 1874, and to John A. Dix, Esq., of April 24th, 1875, so far as they conflict with this decision, and decline to except by name and survey any mine whatever in said town.

H. W. R. CROUCH.

Where land is of little, if any, value for agricultural purposes, but is essential to the proper development of mining claims, it should be withheld from sale under the laws regulating the disposal of agricultural lands and be disposed of only under the mining acts.

Commissioner Burdett to Register and Receiver, Marysville, Cal., Jan. 3, 1876.

The testimony submitted at the hearing [to determine the agricultural or mineral character of the land] establishes the fact that the land is of little value for agricultural purposes, and that it is bounded on the south by valuable gold-bearing gravel mines or deep hydraulic diggings, which can be successfully worked and developed only by means of tunnels passing through this land to Deer Creek, which is the only natural and practicable outlet for these mines.

It is shown that portions of the land in dispute are claimed and held by mine owners, and that several tunnels are now being run through this land for the purpose of developing and working said gravel mines.

It also appears that Mr. Crouch has conveyed by deed to the Mooney

Flat Hydraulic Mining Company certain mining rights upon the land in dispute, and that he acknowledges the mineral character of the S. ½ of S. ½ of the N. W. ¼ of the N. W. ¼ of said section.

The testimony in this case forces upon my mind the conclusion that this land is only valuable on account of its location with reference to said mining claims, and that it is of far greater value for mining purposes than for agricultural purposes.

Mines only become valuable when they can be developed and the precious metals extracted; and in cases of this kind, where the land is of little, if any, value for agricultural purposes, and is essential to the proper working of deep gravel mines, it should be withheld from sale under the laws regulating the disposal of agricultural lands, and disposed of only to such parties as may be entitled to the same under the mining acts of Congress.

In the case under consideration, the land will be withheld from sale as agricultural land.

DEPUTY.

Acting Commissioner Lippincott to Register and Receiver, Salt Lake City, Utah, Jan. 27, 1876.

Several papers have been received from your office which appear to have been sworn to before "Oliver A. Patton, Register, per A. D. Wheeler, Deputy."

Neither the Register nor Receiver has authority to deputize any person to administer oaths; and papers sworn to before any person purporting to act as deputy for either the Register or Receiver, cannot be received as evidence.

NERCE VALLE.

Sioux Half-Breed Scrip cannot be located on mineral lands, and titles thereto cannot be secured except on compliance with the mining acts of Congress.
The kind of land Sioux Half-Breed Scrip may be located upon.

Acting Commissioner Lippincott to Hon. L. V. Bogy, U. S. Senate, Feb. 23, 1876.

The act of July 17, 1854, authorizing the issuance of Sioux Half-Breed Scrip, provides that said scrip may be located upon certain lands within their reservation, "or upon any other unoccupied lands subject to pre-emption or private sale, or upon any other unsurveyed lands not reserved by government, upon which they have respectively made improvements."

Mineral lands are not subject to pre-emption or private entry, but on the contrary are reserved for sale to parties showing compliance with the mining acts of Congress.

Lands which are mineral in character cannot therefore be entered with Sioux Half-Breed Scrip.

PUBLISHED NOTICES.

Acting Commissioner Lippincott to Register and Receiver, Central City, Colorado, March 7, 1876.

I have to direct that published notices in mining applications be numbered to correspond with the record of applications in your office, and instead of being headed as at present: "Lode Notice," etc., the

words, "Mining Application, No. ——," be used, inserting the number of the application.

EVANS *vs.* RENDALL.

The decision of a court of competent jurisdiction that an adverse claimant to certain mineral lands in dispute has no right, title or interest therein, is final as to his rights thereto.

Such adverse claimant is estopped from alleging that the land so claimed as mineral land is of a different character.

Secretary Z. Chandler to Commissioner Burdett, March 23, 1876.

From the papers transmitted in this case, it appears that on the 21st of March, 1872, Rendall made an application at the local office for a patent of certain lands as mineral lands on sections 34 and 35 in said township, including those in dispute; that on the same day Evans made an application at said office for a patent of the N. W. ¼ of the S. W. ¼ of said section, claiming adversely to Rendall; and that thereupon an order of suspension was issued to Evans, and their applications, with others claiming adversely to Rendall, were duly certified to your office.

In your decision of October 22, 1873, you held that Evans' application was "sufficient as a *prima facie* adverse showing," and that it would be necessary for him to commence suit in a court of competent jurisdiction to determine his right to the possession of the land in dispute within thirty days after receiving notice of your decision.

It further appears that in accordance with your decision Evans subsequently commenced an action against Rendall in the district court in which said land is situated, to have his rights thereto determined, and that at the trial had in said cause it was adjudged that he had no right, title or interest therein.

Since said trial and decision, Evans has filed a petition, accompanied with affidavits tending to show that the land is agricultural and not mineral, alleging that Rendall fraudulently seeks to obtain it from him, and asks to have the case reopened and the character of the land determined.

Rendall has filed counter-affidavits, showing the mineral character of the land, his continual occupation thereof, and mining improvements thereon, valued at four thousand dollars.

I am of the opinion that Evans having once sought to obtain this land as mineral land, adversely to Rendall, is estopped from alleging it to be of a different character; and that the decision of the court having jurisdiction of the case, that he has no right, title or interest therein, must be considered final as to his rights thereto.

BECKNER ET AL. *vs.* COATES.

Aliens cannot hold a mining claim prior to issuance of patent therefor. An assignor can transfer no greater interest to his assignee than he himself possesses, and the purchaser from aliens of an unpatented mine acquires no title thereto.

Such purchaser may re-locate the claim, and thereby acquire a possessory title upon compliance with the local and Congressional laws.

Acting Commissioner U. J. Baxter to Register and Receiver, Roseburg, Oregon, April 24, 1876.

Mr. Coates alleges that he came into possession of said premises by purchase on the 23d of September, 1875, from Su Hang, Shi Quong,

Wong Chung, Shi Shoon, Ah Woo and Wong Loong. He does not allege or show that he had any right, title or interest in said premises previous to the date of said deed from said Chinamen.

No title in mining claims can be held by aliens prior to the issuance of patents therefor.

At the time said aliens claimed said premises, they could not, under the law, hold title to the same, and having no authority of law for laying claim to said premises, they could transfer no title to Mr. Coates for the same.

An assignor can transfer no greater interest to his assignee than he himself possesses.

In case of the application for patent for the Kempton mine, the Hon. Secretary of the Interior held that "if therefore it appeared in the case that the original locators were not citizens, or had not declared their intention to become such at the time their location was made, and that they had not become citizens when they transferred the mine, I should have no hesitation in holding that the transfer was invalid and the claim of the applicants was not good."

Had Mr. Coates, after said purchase, made a re-location of said mine, made the required improvements, and otherwise complied with the law, he would have been in condition to apply for a patent. But none of these points are shown or alleged.

Said application for patent is accordingly rejected.

LEGAL SUBDIVISIONS.

Acting Commissioner Baxter to Register and Receiver, Shasta, California, April 24, 1876.

There is no law authorizing the sale of quartz claims by legal subdivision.

PUBLICATION OF NOTICE.

Where the Register designates the daily issue of a newspaper for publication of notice of a mining application for patent, it is not a compliance with law to change to the weekly edition of the same paper without authority of the Register.

Acting Commissioner Baxter to Register and Receiver, Helena, Montana, April 29, 1876.

On the 27th December, 1875, Charles W. Cannon, Catharine B. Cannon and Henry Cannon filed in your office an application for patent for the N. W. ¼ of section 25, T. 10 N., R. 4 W., Montana; and on the same day the Register ordered the publication of the notice in "the Helena *Herald*, a newspaper published daily at Helena, Montana."

By the affidavit of Andrew J. Fisk, one of the publishers of the Helena *Herald*, daily and weekly edition, it is shown that said notice was inserted in the Helena *Daily Herald* on the 28th December, A. D. 1875, and continued to be published therein on the 29th, 30th and 31st of the same month; "that on the 3d day of January, A. D. 1876, at the request of C. W. Cannon, one of the parties named in said annexed notice, said annexed notice was ordered by said Charles W. Cannon to be changed from the *Daily Herald*, and to be published in the *Weekly Herald*, which said notice by the order of Charles Cannon was so changed from the daily to the weekly *Herald*, and the first

insertion of said notice being published in the *Weekly Herald* on the 6th day of January, 1876, and the last notice in said *Weekly Herald* on the 2d day of March, A. D., 1876."

In view of these facts, the question is presented whether said notice was published in the manner and for the length of time prescribed by the statute.

The sixth section of the mining act of May 10, 1872, Revised Statutes, Section 2325, provides "That the Register of the Land Office, upon the filing of such application, plat, field-notes, notices and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to said claim."

In the case under consideration, the Register directed the notice to be published in the *Daily Herald* for sixty days. The notice was published in said paper only on the 28th, 29th, 30th and 31st of December—four insertions.

The notice was then discontinued in the *Daily Herald* by instruction of C. W. Cannon, and inserted in the *Weekly Herald.* In the *Weekly Herald* the notice was inserted from the 6th January to the 2d March, 1876.

In case of Jenny Lind Mining Company *et al.*, *vs.* Eureka Mining Company, the Hon. Secretary of the Interior held that in estimating the sixty days of publication required by the act of May 10, 1872, the first day of publication should be excluded and the last included.

In the case of J. H. McMurdy *et al.*, *vs.* E. S. Streeter *et al.*, the Hon. Secretary of the Interior held that "the time elapsing between the first and the last insertion must include the full period of sixty days." From the 6th of January to the 2d March, excluding the first day, is only fifty-six days; the publication, therefore, in the *Weekly Herald*, was not sufficient, even though the notice had been inserted therein by direction of the Register.

From the foregoing it will be seen that the applicants have not given sufficient notice by publication, having published the notice for four days only in the paper designated by the officers to whom the law has delegated the power to authorize the publication of notices in case of applications for patent for mining claims.

The second notice was inserted in the *Weekly Herald* without authority of the Register, and for fifty-six days only.

The statute having in this material requirement been disregarded, the publication as made, and all subsequent proceedings founded upon it, were irregular and invalid. Said application for patent is accordingly rejected.

DECEASED LOCATOR.

Proof of transfer of title.

Acting Commissioner Baxter to A. Morrell, Washington, D. C., April 29, 1876.

In case of North East Extension of the Yosemite Mine—Mineral Entry No. 113, Carson City District, Nevada—it appears by the abstract of title, that D. H. Crowe was one of the locators; and it also appears that the applicant for patent claims title to said mine, under a deed dated December 29, 1873, signed by the other locators, and by

Jas. T. Maclean as "executor of the estate of D. H. Crowe, deceased."

By a certified copy of the letters testamentary, issued August 22, 1871, from the Probate Court, City and County of San Francisco, California, in the matter of the last will and testament of David Holmes Crowe, deceased, it appears that James T. Maclean and Barry Baldwin were on that date appointed executors of the estate of said Crowe. No copy of said will is attached to said letters.

It also appears by a certificate of the clerk of said court, dated 8th April, 1874, that said letters have been revoked, but the certificate fails to show the date of such revocation.

The applicant should file a certified copy of the letters testamentary, with copy of will attached; a certificate of said clerk, showing the date of said revocation, and evidence that *one* of said executors could legally pass title by deed.

OMAHA QUARTZ MINE.

The local land officers have no authority of law to receive and place on file any adverse claim to a mining application until the legal fees for such filing have been paid in full by the adverse claimants.

An adverse claim, in other respects in due form, received by mail before the expiration of publication of notice, but on which the fees for filing were not paid until after the expiration of such publication, will be treated simply as a protest for the purpose of showing from the record that the applicant has failed to comply with the mining act.

Where the evidence on behalf of the applicant is clear and specific as to the conspicuous posting of notice and diagram on the claim for the period required by law, such evidence will be deemed satisfactory, even though allegations to the contrary are made by the protestants.

Acting Commissioner Baxter to Register and Receiver, Sacramento, California, May 12, 1876.

On the 26th of August, 1875, the Omaha Gold Mining Company filed, in your office, an application for patent for the Omaha Quartz Mine.

The notice was published in the Nevada *Transcript*, on the 1st of September, 1875, and for the full period of time required by law.

On the 28th of October, 1875, and before the expiration of the sixty days notice by publication, you received by express, from John H. Foley, Patrick Ryan and J. M. Foley, certain papers intended as an adverse claim against said application; but as the fees for filing an adverse claim did not accompany said papers, you refused to place them on file.

The twelfth section of the mining act of May 10th, 1872, provides that the fees for filing and acting upon each adverse claim shall be five dollars for the Register and a like amount to the Receiver.

The 80th paragraph of circular instructions from this office under said act, provides that the fees should be paid at the time of filing the adverse claim. An adverse claim cannot be considered as filed until the party who desires to assert an adverse claim against an application for patent has performed all the acts required of him by the statute.

The local officers are required to report to the Commissioner of the General Land Office the amounts received for filing and acting upon adverse claims, and to place said sums to the credit of the United States, and they have no authority of law to receive and place on file

any adverse claims until the legal fees for such filing have been paid in full.

Parties who fail to comply with the plain and positive requirements of the law in asserting their adverse claims, cannot thereby prejudice the rights of applicants who strictly comply with the requirements of the statute.

In the case under consideration, after said papers had been received, and on the succeeding day, you telegraphed to J. M. Foley that the papers had been received without the fees, and instructed him to send the fees or you could not file the adverse claim.

Two days still remained within which said adverse claimants might have completed their case; but the required fees were not transmitted until the 5th of November, five days after the expiration of the sixty days notice by publication, and after the period within which adverse claims must be filed; and for this reason said papers cannot be considered as an *adverse claim*.

The sixth section of said mining act provides that "if no adverse claim shall have been filed with the Register and Receiver of the proper land office, at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent * * and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with this act."

This filing can only be considered as a protest and for the purpose of showing that the applicant has failed to comply with the mining act.

The said Foley *et al.*, allege that the notice was not duly published, having been published in the Nevada *Transcript*, Nevada City, Cal., instead of in the Grass Valley *Union*, published at Grass Valley, Cal., and that the notice and diagram were not posted *conspicuously* upon the claim. [For question of publication see page 216.]

By the affidavits of M. Dodsworth, Superintendent of said Omaha mine, and eighteen other persons, it is shown that the notice and diagram were posted in the most conspicuous place upon said claim, near the centre thereof, upon a prominent point, about eight feet south of the main traveled trail leading across said mine, and that said notice and diagram could be seen at a distance of more than five hundred feet.

The evidence upon this point is satisfactory.

ABANDONED MINE.

Acting Commissioner Baxter to L. E. Morgan, Bullion, Elko Co., Nev., June 2, 1876.

Where a party abandons a mining claim, he has the undoubted right to remove from said claim any machinery or buildings which he may have placed thereon, or any ore that he may have extracted from such mine. A party re-locating an abandoned mine may, in prosecuting work thereon, either sink new shafts and run new tunnels, or continue the work upon such shafts or tunnels as may have been constructed by parties who had abandoned the same.

SALE—ALIEN—DECLARATION.

The portion of a mining claim sold to an alien cannot be patented while such owner is an alien; but on his declaration to become a citizen, his right dates back to his purchase, and he may thereupon secure United States patent for his claim.

Commissioner Williamson to Register and Receiver, Carson City, Nevada, July 18, 1876.

On the 27th of May, 1875, an application for patent for four hundred linear feet of the Lady Allen vein or lode was filed in your office.

This application was sworn to before the Register on the 27th May, 1875, by William S. Wood, *one* of the applicants for patent, the others being G. W. Deys, J. P. Sweet, Jacob Smith, Levi Chapman and John B. Gallagher. It appears from a certified copy of the location notice that W. W. Elliot and one other located four hundred feet of the Lady Allen lode—Mary Ann Co.—on the 11th July, 1863, and made record of such location.

The abstract of title is incomplete. In the sworn statement of W. S. Wood, he refers to certain deeds made previous to the year 1870, which, "although properly executed and delivered, were not recorded, and were, as deponent is informed and believes, destroyed by fire in the town of Silver City, in the year 1870," and alleges that said applicants "have become the owners of, and are in the actual, quiet and undisturbed possession of," said premises. It is shown, however, by the abstract of title from the office of the Recorder of Lyon county, Nevada, that J. P. Sweet, one of the applicants, conveyed by quit claim deed, dated May 19, 1875, fifty feet in said claim to John Henry, and that this deed was recorded May 26, 1875, in the Recorder's Office.

In an affidavit on file with the case, sworn to by W. S. Wood, on the 1st March, 1876, before the Register, Mr. Wood alleges that "he is informed by said John Henry—and the deponent verily believes that said John Henry is an alien, and a subject of Great Britain—that deponent has frequently requested said Henry to make declarations of his intention to become a citizen of the United States, in order that said application for patent might proceed; but the said Henry has constantly, and does now positively, refuse to make any such declaration, but still continues an alien, and declines and refuses to take any step toward becoming a citizen of the United States."

"Deponent further says that by reason of the facts aforesaid, the applicants are unable to present any abstract of title showing a right in them to all of the mining claim aforesaid, and that the undivided fifty feet thereof stands in the name of said John Henry."

It is urged by the attorneys for the applicants for patent, that an alien is incapable of acquiring a patentable interest in a mining location, and that the "attempt of Sweet to convey to Henry what the law prohibits the latter from holding, does not in any way affect the rights of these applicants, the act being void." Said attorneys ask therefore that the patent issue to said applicants.

No patent can issue upon this application as it now stands, as they have not title to the entire premises for which patent is sought.

It is true that John Henry being an alien has no patentable interest in said mine at the present time, but should he become naturalized, his right to a patent upon compliance with the law would be perfect, for

"naturalization has a retroactive effect so as to be deemed a waiver of all liability to forfeiture and a confirmation of his former title." *Vide* Osterman *vs.* Baldwin, 6 Wall. 116; Jackson *vs.* Beach, Johnson's Cases 401.

It has been held by the Supreme Court of the United States, in numerous cases, that an alien can take by deed and hold until office found. *Vide* Fairfax, Devisee *vs.* Hunter, 7 Cranch 603; Orr *vs.* Hodgson, 4th Wheaton 453; Craig *vs.* Leslie *et al.* 3d Wheaton 563; Craig *vs.* Radford, 3d Wheaton 594; Cross *vs.* DeValle, 1st Wall. 1; Osterman *vs.* Baldwin, 6th Wall. 116; Governeur's Heirs *vs.* Robertson, 11th Wheaton 332.

Said application for patent will therefore remain suspended until the applicants shall show that they are in a condition to receive patent.

MONTANA LODE CLAIMS.

Lode claims in Montana located under the territorial act of December 26, 1864, are entitled to fifty feet in width of surface ground on each side of the lode in addition to the width of the lode.

Secretary Chandler to Commissioner Williamson, July 24, 1876.

I have considered the appeal of Tootle, Hanna *et al.*, claimants of Stapleton lode, M. E., No. 120, and Tuscarora lode, No. 118, from your adverse decision of May 5, 1876, upon their application for patents for said lodes.

Each of these lodes has been surveyed in due form, with a width of 120 feet—20 feet representing the width of the lode, and fifty feet on either side for working purposes.

* * * * * * * *

Since the decision of my predecessor above referred to, the Supreme Court of Montana has given construction to the act in question, holding that it authorizes the location and patenting of fifty feet on each side of the lode in addition to the lode itself.

The act being one of the Territorial Legislature, the construction given it by the highest court of said Territory should be adopted by this Department. I am therefore compelled to reverse your decision, and hold that the claimant is entitled to 50 feet on each side of the lode, in addition to the width of the lode itself.

As the width of the lode in these cases appears to be 20 feet, I approve the survey, and direct the patents to be issued pursuant to the application therefor.

PROOF OF CITIZENSHIP.

Instructions under the Secretary's decision of July 29, 1876.

Commissioner Williamson to Register and Receiver, Stockton, California, August 2, 1876.

Copies of the naturalization certificates are not required when citizenship is properly alleged under the mining act.

You will require applicants to file their affidavits showing whether they are native or naturalized citizens, when and where born. In case an applicant has declared his intention to become a citizen or has been naturalized, his affidavit must also show the date, place and the court before which he declared his intention or from which his certificate of citizenship issued.

PHILADELPHIA *vs.* PRIDE OF THE WEST.

Consideration of a mining location alleged to be void for uncertainty.

The end lines of a mining survey must be parallel. Courses and distances must give way when in conflict with fixed objects.

Commissioner Williamson to Register and Receiver, Del Norte, Colorado, August 28, 1876.

On the 10th June last, a decision was rendered by this office in case of the application for patent for the Pride of the West lode, Colorado, rejecting the adverse claim of the Philadelphia lode claimants, and overruling their protest against said application for patent.

On the 11th instant the attorneys for the Philadelphia claimants filed in this office an appeal from said decision; and on the 21st instant withdrew said appeal, and filed a request for a reconsideration of said decision.

It is urged that the Pride of the West was not properly located; that the notices of location are irregular and void for uncertainty; that the surveys of the Pride of the West lode were improperly made and are in effect private and not official, and that the plats do not correctly represent the boundares of the claim.

In other words, it is claimed by the attorneys for protestants that the location of the claim was not made in conformity with law, and that the survey is irregular.

The *location* of the claim will be first considered. It is shown by certified copies of the notices of location that said lode was located June 10, 1874, and record made of such location on the 19th of the same month, and again located August 7th, 1874, and recorded on the same day.

On the 18th day of September, 1874, an additional certificate of location was recorded. In this notice it is stated that they claim the Pride of the West lode according to the survey made the 16th September, 1874, by T. M. Trippe, U. S. Deputy Surveyor, as follows, viz: "Running from the discovery tunnel S. 20° 30′ E. (Mag. Var. 14° 30′) 922 feet, thence S. 6° 30′ W. (Mag. Var. 14° 30′) 578 feet, being 1,500 feet linear and horizontal measurement along the surface of the lode, with 150 feet in width on each side of the center line thereof."

The first two location notices recorded do not give the courses along the line of the premises claimed, but the last one does.

The act of the Colorado legislature concerning mines, which was approved February 13, 1874, and which went into force 15th June, 1874, provides in the 13th section thereof that "if at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned * * * * such locator or his assigns may file an additional certificate subject to the provisions of this act," etc.

It appears that the locators of the Pride of the West lode made an additional certificate, based upon an actual survey executed by Deputy Surveyor Trippe, and filed their additional certificate dated 18th September, 1874, for record in the office of the County Clerk and Recorder of La Plata county, Colorado, September 18, 1874.

The Deputy Surveyor, in his sworn statement, alleges that when he made said survey of September 16, 1874, he "placed six posts upon the claim, in full compliance with all the requirements of the law."

It is urged that as the additional location certificate does not state the land or mining district, the county, state, or territory in which the claim is located, and fails to state the date of the location, the same is void and not made in accordance with law.

This location notice was signed by all the locators, was dated September 18, 1874, and recited the fact that it was a *re-location* notice, and that the claim was situated on Green Mountain.

This notice was signed by all of the original locators, was recorded the same day that it was dated, in the same book of records that the two former locations of the claim were recorded.

In both of the former notices the mining district, county and territory were stated, also the date of the location of the claim.

This re-location certificate, based upon an actual survey made by U. S. Deputy Mineral Surveyor Trippe, was in my opinion made in conformity with the provisions of the local laws and Congressional enactments.

The objection to the *location* of said claim is accordingly overruled.

Survey. The survey made of said claim on the 4th September, 1875, the plat and field notes of which were approved by the Surveyor General September 24, 1875, and were filed with said application for patent, was executed by the same deputy surveyor who one year previously had surveyed the claim to enable the locators to make record of the premises claimed.

The location notice—the last one recorded—described the premises as "Running from the discovery tunnel S. 20° 30′ E. 922 feet. Thence 6° 30′ W. (Mag. Var. 14° 30′) 578 feet, being 1,500 feet linear and horizontal measurement along the surface of the lode, with 150 feet in width on each side of the center line thereof."

The premises described in the plat and field notes filed with said application extend from the northerly end of the lode S. 20° 30′ E. 922 feet; thence south 3° 42′ W. 578 feet, with surface ground one hundred and fifty feet in width on each side of the centre line of the survey.

In his sworn statement Deputy-Surveyor Trippe alleges that an error was made in the survey made as a basis for the location notice, owing to a defect in the compass used upon that occasion; but that the second survey, the one approved by the Surveyor-General, "covered exactly the same ground as the first."

He also states that "the two surveys cover the same identical ground." * * * * "I marked the boundaries of the Pride of the West claim at the first survey by six substantial posts, one at each of the four end corners, and two in the middle of said claim, in manner as described by the Colorado law." * * * "On making the first survey I employed two of the owners of the Pride of the West as chainmen; in the second survey I re-chained the distance myself, and found a slight error in the measurement of the first survey. I accordingly moved the stakes at the south end of the Pride of the West lode to their proper position, about 3 feet north of their position as placed by the first survey. * * This changing the stakes as I mentioned did not affect the disputed ground of the two lodes."

By the foregoing it is shown that the same premises are described in the field notes and plat which were filed with the application for patent, as those embraced by the survey made as the basis of the "additional location certificate" and record, and that posts were established at the time of making said first survey, at the four corners and also at the angles in the side lines. It is shown that an error was made in the survey made as the basis of the last recorded notice of location, the posts at the southerly end of the claim having been placed about three feet too far south, and the course between the posts at the angles on the easterly and westerly sides of the claim, and the posts established at the south-easterly and south-westerly corners of the claim given as S. 6° 30′ W., instead of S. 6° 42′ W., the actual course between said points. With these exceptions, the description given in the plat and field notes agrees with the description contained in the last recorded notice of the location.

It is well settled by judicial decision that courses and distances must give way when in conflict with fixed objects and monuments.

It is also urged that as the discovery of the Philadelphia lode is in reality outside of the boundaries of the Pride of the West claim instead of within such boundaries as represented upon the plat, that such survey is erroneous.

It is not claimed that the courses and distances between the several posts described in the plat and field-notes of the Pride of the West are erroneously given.

The fact that the discovery shaft of the Philadelphia lodes is represented upon said plat as lying within the exterior boundaries of the Pride of the West survey, while in reality it lies five feet to the east of the easterly boundary of said survey, will not prejudice the right of the Philadelphia claimants in any respect; as the patents in all cases of applications arising under the mining act follow the description of the premises as given in the field-notes of survey thereof.

It is urged that no patents can issue upon said application as the end lines of the claim as surveyed are not parallel to each other, as required by the last clause of the 5th section of the act of May 10, 1872.

The course along the northerly end line of said survey is N. 69° 80′ E., while the course along the southerly line is N. 86° 18′ W. These end lines are perpendicular to the side lines, but are not parallel to each other, there being an angle in the side lines between the northerly and southerly ends thereof. It might be questioned whether there has been a failure to comply with the *spirit* and *intent* of that provision of said section which requires that "the end lines of each claim shall be parallel to *each* other." But as a claimant may at any time abandon the whole or any part of his application for patent, a *strict compliance with the letter of the law* in regard to end lines may be secured by the applicants filing an abandonment of so much of the premises embraced by their application as may be necessary to render the end lines parallel, and having an amended survey filed.

Should such abandonment be filed, the rights of no parties other than the applicants would be affected thereby, as there is no adverse claimant to that portion of the premises embraced in said survey which it would be necessary to abandon to make the end lines parallel.

Seeing no error in the decision of this office of June 10th last, in this

case, the same will stand as explained herein as the decision of this office.

COMSTOCK LODE.

Hearing to determine facts in connection with the Sutro Tunnel.

Commissioner Williamson to Register and Receiver, Carson City, Nevada, October 19, 1876.

You notified the applicants for patent for the Brunswick Mine and A. Sutro, Esq., that a hearing would be held before you on the 4th instant, to receive evidence as to whether or not said mining claim had been drained, benefited, or developed by the Sutro Tunnel.

You state that Mr. Sutro "moved the Register to write an official letter to Mr. Fair, requesting the privilege for Mr. Sutro, or such persons as he should designate, to visit the interior of the mine in question."

This official request you declined.

Your action in this matter is approved. Should Mr. Fair desire to permit Mr. Sutro or any other person to visit the interior of his mine, he will undoubtedly accord him that privilege.

This office has never attempted to control or interfere with the right of mine-owners to exercise the right of ownership and possession of mining premises claimed by them, so long as they comply with the requirements of law.

OMAHA QUARTZ MINE.

The law is explicit to the effect that notices of mining applications must be published in a newspaper, to be designated by the Register as published nearest the mining claim. The Register has no discretion except where two or more papers of repute are published equidistant, or nearly so, from the mining premises sought to be patented.

Secretary Chandler to Commissioner Williamson, December 1, 1876.

The protestants state that the point upon which they rely in the appeal "is as to the sufficiency of the publication" or the failure to comply with the law in the matter of publication of notice.

The notice was published in the Nevada *Transcript*, a paper published in Nevada City, a town situated about six miles from the mine, and the publication was made by direction of the Register. It appears that in Grass Valley, a town situated about two miles from the mine, two papers are published, a daily and a weekly. It is contended that the notice should have appeared in a paper published nearest the claim. You held that the publication was sufficient.

The sixth section of the act of May 10, 1872, provides that the Register of the land office "shall publish a notice that such application has been made, for a period of sixty days, in a newspaper to be by him designated as published nearest to said claim."

It would seem that the intention of Congress was plain that the notice should appear in a paper published at a point indicated, and the Register is authorized to designate said paper, following the plain instructions of the statute, which would seem to point out his duty. In this case, however, he has exercised his discretion, disregarded the papers published at Grass Valley, and selected another.

I see no warrant for the exercise of this discretion. Under the provisions of the statute the public have a right to look to the paper is-

sued nearest the claim as the one in which a notice of application for a patent should appear. If any discretion is allowed a Register, where shall it be limited? If he may ignore a paper published two miles from a claim, and designate one published six miles distant, he may designate one published at a much greater distance. This question would not have arisen, had the Register performed what, I think, was clearly his duty, and the instructions of your office should be made so explicit as to allow no opportunity for the question to arise in the future. If two or more papers of repute are published equidistant, or very nearly so, from the claim, the Register must designate the one in which the notice shall appear; but in other cases the paper published nearest the claim must be designated, provided the same is a reputable newspaper of general circulation.

In the case under consideration it does not appear that the applicants are in any manner at fault, and to reject their application, when they have, in good faith, complied with the law and the instructions given them by the local officers, would be a hardship.

I cannot, however, recognize the action taken as a strict compliance with the law, and the case is returned to be submitted to the Board of Confirmation for its action, as your action rejecting the adverse claim of Foley *et al.*, is approved for the reasons given.

CITY ROCK *vs.* KING OF THE WEST.

An application for patent should show in material particulars compliance with the local and United States laws.

Objection to a somewhat indefinite notice considered. The question to be considered is this: was, or could anybody be, misled by the notice?

Consideration of the question of jurisdiction in cases of contests in disposing of mineral lands. Matters of form are to be decided by the Department of the Interior. The merits of the case must be decided by the courts.

In mining applications the time or order of presenting the required proof of compliance with law, is of less importance than the proof itself.

Secretary Chandler to Commissioner Williamson, December 26, 1876.

On the 15th day of August, 1873, W. H. Pitts *et al.* filed an application with the local officers at Salt Lake City for a patent of a certain mining claim known as the King of the West Lode, situated in Little Cottonwood mining district, Utah Territory.

During the publication of the order made thereon, R. C. Chambers claiming to be the purchaser for a valuable consideration of the mining claim known as the City Rock lode, situated in the same mining district, filed an adverse claim for a portion of the tract embraced in said application, alleging prior discovery and improvement.

On the 23d of April, 1875, my predecessor reversed your decision of December 14, 1874, and rejected the application of Pitts *et al.*, on the ground that the proof of the posting of the notice and diagram on the claim during the period of publication, as required by law, was defective.

He also rejected the adverse claim of Chambers, on the ground that he was the secret trustee of the City Rock Mining Company, of London, England, a foreign corporation.

On the 29th of the same month a motion was made for a re-hearing, and on the 24th of August, 1876, I decided that my predecessor's decision should be so modified as to allow the applicants to make an

entry of the tract described in their application, upon their showing compliance with law.

On the 28th ultimo, the matter again came before me for a hearing by stipulation of the parties in interest, upon the proofs heretofore filed in the case, subject to any legal objection thereto.

From the application of Pitts *et al.* and the accompanying papers, it appears that on the 12th day of September, 1870, J. Pitts *et al.* discovered the lode or vein known as the King of the West lode, planted a stake thereon, to which they attached a notice giving the names of claimants, number of feet claimed, and the general course and direction thereof.

Subsequently they filed in the office of the recorder of said mining district a notice of their location.

The proof showing that the notice and diagram required by law to be posted on the claim during the publication of the order made upon filing the application, has been supplied since my decision of the 24th of August last, from which it appears that said notice and diagram were posted on the claim and remained so posted during the time of such publication.

Objection was made on the hearing that the application does not show in terms the particular manner in which the applicants had complied with all the rules and regulations of said mining district.

In those particulars in which it is considered material that an application should show such compliance, viz: the amount of work done each year and the possession and development of the mine, the proof shows that the applicants and their grantors did comply with the rules and regulations of said district and the laws of the United States.

It is also objected that the notice of location is too indefinite.

The application shows that upon making the discovery of the lode the locators planted a stake thereon, to which they attached a notice of their claim, somewhat indefinite, it is true, but when taken in connection with the stake and the monuments mentioned, together with their subsequent improvements, I think it was sufficiently definite, and that no one could have been or was misled thereby.

It was further objected that the proof of posting the notice and diagram upon the claim during the publication of the order made upon filing the application, was not filed in proper time.

This question was considered upon the motion for a rehearing in the case, and in my opinion the neglect to file the proof with the application was sufficiently excused by the affidavits then filed.

It must be remembered that all of the proof made in an application for a patent of a mining claim is *ex parte*, and that proof that the applicants have complied with the law is of more importance than the time or order in which it is made.

I am of the opinion that the applicants are entitled to a patent of the tract described in their application, unless their right thereto shall be defeated in part by the superior right of their adverse claimant.

The adverse claim filed by Mr. Chambers shows that on the 29th of June, 1870, Swen Johnson *et al.* discovered the vein or lode known as the City Rock lode or claim; that they marked out the extent and boundaries thereof, erected a location monument, and posted thereon a written notice of their location; that on the 11th day of July, 1870,

they filed a notice of their claim with the Recorder of said mining district, that said locators immediately commenced to work on said claim, and that the adverse claimant and his grantors have complied with all of the rules and regulations of said mining district.

The adverse claimant also files a map or diagram of the respective claims, showing their location and the conflict in their boundaries.

Within thirty days after filing said claim, as appears by the certificate of the Clerk of the 3d Judicial District of said Territory, Mr. Chambers commenced an action of ejectment against the applicants to recover the possession of that portion of the City Rock claim which is embraced in the application for a patent by the claimants of the King of the West lode.

It further appears by the certificates of the clerk of said court, dated October 16, 1876, that a judgment was subsequently rendered therein in favor of said Chambers and against the applicants. On behalf of said adverse claimant it is urged that upon filing the adverse claim and the commencement of said suit under the seventh section of the act of May 10, 1872, the jurisdiction to determine the rights of the parties to the tract in controversy was transferred to said court, and that this department has no further duty to perform in the matter until a final determination shall be had of that case.

Section 7 of the act aforesaid reads as follows: "That where an adverse claim shall be filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries and extent of such adverse claim; and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant within thirty days after filing his claim to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment, and a failure to do so shall be a waiver of his adverse claim.

"After such judgment shall have been rendered, the party entitled to the possession of the claim or any portion thereof may, without giving further notice, file a certified copy of the judgment-roll with the Register of the Land Office, together with the certificate of the Surveyor-General that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the Receiver five dollars per acre for his claims, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the Register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear from the decision of the court to rightly possess. If it shall appear from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with proper fees, and file the certificate and description by the Surveyor-General, whereupon the Register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights." * * *

The plain meaning of this section is, that all contests which may arise in the disposal of the mineral lands, shall be tried and determined, if tried at all, in a court of competent jurisdiction ; that the adjudication and determination of that court shall be final, and a patent for the tract in controversy shall issue to the successful party or parties, upon showing further compliance therewith. It is equally clear, I think, that when the court has acquired jurisdiction of the subject matter in controversy, all other proceedings, except those mentioned, must be stayed until such determination is made, if the suit be prosecuted with reasonable diligence.

The only question which can ever arise is whether the adverse claimant has complied with its terms, so as to bring his case within it. He must file his claim during the period of publication, showing its "nature, boundaries and extent," and bring suit for a recovery of the possession of it within thirty days thereafter, or be deemed to have waived it.

Has the adverse claimant in this case shown such a compliance? I think he has.

He filed his claim under oath during the period of publication, showing the origin of his title thereto, as well as its nature, boundaries, and extent, and brought suit within the time prescribed to recover possession of that portion of it claimed by the applicants.

To this claim, as filed, the applicants object.

First:—That it differs materially from the original location, which was for one thousand feet of the City Rock Lode, "extending six hundred feet northerly and four hundred feet southerly," while the claim as filed is for a tract of land lying nearly east and west.

Second:—That the adverse claimant has no title to the tract claimed, or if he has, he holds it as the secret trustee of the City Rock Company, a foreign corporation, and is therefore not entitled to present a claim.

Both of these objections go to the merits of the case, and not to the form of the claim. It is unquestionably your duty, as well as mine, when an adverse claim is presented for consideration, to examine it, and determine whether the claimant has substantially set forth under oath, its "nature, boundaries, and extent;" but if a compliance with the law is shown in these particulars, and a suit has been instituted to determine the rights of the parties, I am of the opinion that we can proceed no further with the investigation. It is the duty of the court in which the suit is pending to determine all other questions relating to the controversy.

I therefore direct that the application of W. H. Pitts *et al.* for a patent of the King of the West Lode be suspended until the final adjudication and determination of the rights of the parties involved in the suit now pending in the 3d Judicial District of Utah Territory be made, or it is shown that said suit is not prosecuted with reasonable diligence.

SACRAMENTO *vs.* LAST CHANCE.

An application for patent for a mining claim, signed by one joint owner for himself and his co-claimants, should be recognized as the application of all the owners in the absence of alleged or apparent fraud, as also the acts of attorneys, performed in the legitimate prosecution and adjudication of cases as the acts of the claimants themselves.

The filing of an abandonment of surface ground in conflict does not terminate the contest initiated by an adverse claimant, but the judgment of the court having jurisdiction must be had upon all the questions involved in the controversy before patent can issue for the portion of the claim not in dispute.

Secretary Chandler to Commissioner Williamson, January 3, 1877.

I have considered the appeal of George R. Ayers and Isaac S. Waterman, claimants of Sacramento lode, from your decision of June 17, 1876, allowing a patent to issue for the Last Chance No. 2 mine, Marcus Daly and John Cassin, applicants, situated in Ophir mining district, Utah Territory.

Daly and Cassin applied for a patent March 6, 1875, and during publication of notice, viz., on the 5th of May, 1875, Ayers and Waterman filed an adverse claim, and on the 29th of the same month commenced suit in the District Court in the 3d Judicial District of Utah.

The first and second objections raised by the adverse claimants in their appeal, viz.: that the application for a patent, signed by Daly only for himself and Cassin the joint owner, was not a legal application, no anthority to sign for Cassin being shown; and secondly, that the abandonment of the surface ground in dispute, filed by Shellabarger and Wilson, attorneys for the applicants, cannot be treated as an abandonment by the applicants, as no authority from them to so act is shown by the attorneys, raise points involving questions of office practice, and are not vital in the consideration of the case.

The practice of your office has been to recognize an application for a patent signed by one joint owner in behalf of himself and the remaining joint owners, in the absence of alleged or apparent fraud. The practice is one of great convenience to the applicants, and is based upon law and reason.

The practice of the department has also been uniform in regarding the acts of recognized attorneys, performed in the legitimate prosecution and adjudication of cases, as the acts of the claimants themselves. This practice is based upon custom and principle, and I see no reason to change or modify the same in the absence of either alleged or apparent fraud. In my opinion no substantial reasons are assigned why the rules so long and uniformly practiced in your office should be changed, and the application declared illegal, and the abandonment a nullity.

You hold that by reason of the abandonment, "no necessity exists for a further suspension of proceedings upon said application for patent." In view of the provisions of section 7 of the act approved May 10, 1872, I think this conclusion was erroneous. In accordance with the provisions of that section Ayers and Waterman filed an adverse claim upon oath, showing the nature, boundaries and extent of said claim, and commenced suit. The possession of the surface ground in dispute may be of the least importance, a mere incident; other and far more important questions may be involved, the location of the lode for example; and to allow the defendants to obtain the advantage to be derived from the possession of a patent from the Government, simply by filing in your office an abandonment of said surface ground, would in my opinion, be an evasion of both the intent and letter of the law.

The terms of the act are explicit; all proceedings except the publication of notice and making and filing of the affidavit thereof, shall be

stayed, until the final adjudication of the case by the authorized tribunal, or a waiver of the adverse claim.

The provision of the law that in case two lodes intersect, the prior location shall be entitled to the ore or mineral contained within the space of intersection, does not, in my opinion, release this department from the duty of abstaining from all further proceedings in the case, or justify the issuing of a patent embracing the premises in controversy, with the exception of the immaterial portion abandoned by the applicants, viz: the surface ground. I think it is clear that it was the intention of Congress to refer *all* questions arising from a conflict of claims, where a suit is duly commenced, to a court of competent jurisdiction, in the possession of the power necessary to ascertain the truth and facts relating to the same, a power not possessed by the department; and if so, it is the duty of your office to refrain from any act that would in any manner interfere with the adjudication of such controversy.

Reference has been made by the attorneys for the applicants to the decision of my predecessor, dated April 1, 1875, in the matter of the application for a patent for the "Antelope lode." After a careful consideration of the case now before me, I am unable to concur in the views expressed in that decision, or to arrive at a conclusion other than that requiring a suspension of all proceedings before this department during the pendency of the suit. This decision is in accordance with the views expressed by me on the 26th ultimo, in the matter of the application for a patent for the "King of the West mine."

It follows that your decision must be reversed, and all proceedings in the case suspended, until the final determination of the same by the court, or a waiver of the adverse claim in due form, or by a failure to prosecute the suit with reasonable diligence.

NEWSPAPER PARTLY PRINTED ELSEWHERE.

Commissioner Williamson to Register and Receiver, Fair Play, Colorado, Jan. 4, 1877.

In your letter of the 6th ultimo, you stated that both of the papers published in your district are printed on one side in the city of St. Louis, Mo., while the other side of each issue is printed in the district.

There certainly can be no objection or impropriety in a newspaper proprietor's issuing his paper, if he so desires, with one side of his paper entirely blank or filled with matter printed in another city or state.

In case one side of the paper is printed and the paper is published in a given town in your district, you should in accordance with the terms of the mining act, publish the notices required by said act in the newspaper "*published* nearest to said claim."

Many of the papers published in those parts of the country which are not thickly settled are printed on one side in another city or state, while the other side is filled with local news or advertisements.

MT. PLEASANT MINE.

A party not in interest, but standing in the relation of *amicus curiæ*, has no right of appeal from any decision rendered in a case.

When an applicant withdraws his application for patent before the Department for that

portion of the premises against which an adverse claim has been asserted, and confesses judgment in court upon the suit brought by the adverse claimant, patent may issue for the balance of his claim if the proofs submitted are found satisfactory.

Acting-Secretary C. T. Gorham to Commissioner of the General Land Office, February 17, 1877.

I have considered the application of O. D. Lambard for a patent for the Mount Pleasant Mine, Sacramento, California.

Lambard filed application for a patent January 23, 1875. Notice was published from January 28 to April 1, 1875, inclusive.

During the period of publication, viz., March 26, Edward R. Morey filed an adverse claim known as the "Charles Mine," and commenced suit in the 11th Judicial District, April 21, 1875.

On the 24th of March, Jacob B. Fisher, John Melton and F. W. Earl filed an adverse claim known as the "Irish Mine," and commenced suit in the 11th Judicial District, April 21, 1875.

On the 24th of March, Jacob B. Fisher, John Melton and F. W. Earl filed an adverse claim known as the "Earl Mine," and on the 21st day of April, 1875, Fisher and Melton commenced suit in the 11th Judicial District, and at the August term of said court a judgment of non-suit was entered in favor of the defendant. This decision was affirmed by the Supreme Court of California at the following January term—the Court holding that "the defendant was the owner of an undivided interest in the mining claim, and as such was entitled to the exclusive possession thereof against the plaintiffs, they not having shown any title in themselves."

On the 28th of March, 1876, Fisher, Melton and Earl commenced an action in the court of the 11th Judicial District to recover possession of said "Earl Mine," and they requested that said application shall be suspended until said suit shall have been determined, unless the application for patent shall be rejected.

In your decision of September 2, 1876, you hold that this suit having been commenced after the expiration of the 30 days prescribed in the seventh section of the Act of May 10, 1872, cannot operate as a bar to the issuance of a patent.

This decision is in accordance with that of my predecessor in the case of H. B. Morse *vs.* Eli S. Streeter, (Copp's U. S. Mining Decisions, p. 127.)

You also state that the application will remain suspended until it shall have been clearly established that the applicant has the possession, and the right of possession, to the premises, by virtue of compliance with the local laws or customs, and the Congressional enactments.

On the 28th of December, 1876, A. St. C. Denver, Esq., attorney, in behalf of the protestants, filed an argument adverse to the claim of Lambard.

December 4, 1876, the local officers transmitted additional evidence in the matter of the application of Lambard. In your decision of the 9th ultimo, you overruled the objections to the issuance of a patent, and announced that the case would be taken up at once for patenting. On the 10th ultimo, Mr. Denver, in behalf of the owners of the "Earl Mine," the contestants and protestants, appealed from said decision. On the 13th ultimo, you informed Mr. Denver that an appeal by a protestant did not lie from the decision of your office, and on the same

day Mr. Denver appealed from said decision, claiming first, that under the provisions of the 6th section of the Act of May 10, 1872, an appeal may be taken by the protestants; secondly, that Fisher *et al.* did file an adverse claim and commenced suit within the time required; thirdly, that a suit is now pending before the District Court, in which the property is situated, and that while said suit is pending they have the right to appear as contestants, as well as protestants, having the right to appeal from your decision, in order that their legal rights may be reviewed by the appellate authority.

I think your decision, that the suit now pending in relation to the "Earl Mine" was not commenced within the time required, must be sustained, hence the parties can appear in the attitude of protestants only.

In my decision of March 24, 1876, in the matter of the application for a patent for the Boston Quicksilver Mine, on appeal from your decision denying the right of Mr. McGarrahan to appeal to this department, it was stated that "while it was laudable in Mr. McGarrahan to make suggestions to your office of what he believed was an attempted fraud upon the Government in the matter of this application for patent, and proper for you to accept and consider such suggestions in an examination of the case, I can hardly conceive that it will be seriously contended that he, not being a party in interest, but standing in the relation of *amicus curiæ*, has a status entitling him to an appeal. I am very clearly of the opinion that he has no such right, and therefore affirm your decision to that effect."

Applying that rule to this case, Foster *et al.* not being parties in interest, in the eye of the law, by reason of their failure to commence suit in time, and appearing as protestants only, have no right of appeal.

It appears, as before stated, that E. R. Morey, claiming the "Charles" mine, presented an adverse claim, and commenced suit, upon complaint duly filed, within the prescribed time.

This suit was pending at the date of your decision, and in my opinion, should have operated as a stay of all proceedings before this department, as indicated in my letters of December 26, 1876, in the case of the King of the West *vs.* City Rock, and of the 3d ultimo, in the case of the Last Chance No. 2.

Since the date of your decision, however, viz., on the 16th of February, there was filed with me a certified copy of the complaint of E. R. Morey in the suit commenced April 21, 1875, in the 11th Judicial District of California, also a duly certified copy of the confession of judgment.

[No. 2,785.]

In the District Court, 11th Judicial District, County of El Dorado, State of California.

E. R. MOREY	Plaintiff.
vs.	
O. D. LAMBARD.	Defendant.

Now comes the defendant by his attorneys, G. J. Carpenter, and Geo. Cadwalader, and waiving all his other pleas in the above cause, hereby disclaims any right, title or interest in and to the premises de-

scribed in the complaint of plaintiff herein, and consents that plaintiff have judgment according to the prayer of his complaint herein.

G. J. CARPENTER,
GEO. CADWALADER,
Att'ys for Defendant.

I hereby acknowledge the service of the above answer and consent to the filing thereof.

A. P. CATLIN,
GEO. G. BLANCHARD,
Att'ys for Plaintiffs.

Indorsed: Filed Feb. 6, 1877.

GEO. BURNHAM, *Clerk.*

Papers filed on the 16th instant, also show that the same action was taken in the case of J. B. Fisher *et al.*, claiming the "Irish" mine, who commenced suit April 21, 1875, as appears from the following:

[No. 2,786.]

In the District Court of the 11th Judicial District, County of El Dorado, State of California.

J. B. FISHER and JOHN NELTON, *vs.*	Plaintiffs.
ORVILL D. LAMBARD,	Defendant.

Now comes the defendant by his attorneys, G. J. Carpenter and Geo. Cadwalader, and waiving all his other pleas in the above cause, consents that plaintiffs have and recover judgment against him according to the prayer of their complaint herein.

G. J. CARPENTER,
GEO. CADWALADER,
Att'ys for Defendant.

I hereby acknowledge service of the above answer, and consent to the filing thereof.

A. P. CATLIN and
GEO. G. BLANCHARD,
Att'ys for Plaintiffs.

Indorsed: Filed February 6th, 1877.

GEO. BURNHAM, *Clerk.*

It thus appears that Lambard has waived his claim to the premises in dispute, and debarred himself from asserting his right to the same in the future.

The 7th section of the act of May 10, 1872, requires, that when suit has been commenced, all proceedings shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived.

By the action of Lambard, the defendant, taken before the proper tribunal, viz.: the court having jurisdiction in the case, the plaintiffs, Morey, Fisher, *et al.*, have obtained all they sought to obtain by the commencement of the suits, and the same are virtually ended, and the controversy settled. No reason therefore exists why a patent should not issue for the tract not in controversy.

The abandonment of the surface ground, or of the entire premises in controversy, before this department, and the continued prosecution of the suit involving the same premises, before a court of competent jurisdiction, is not, in my opinion, a proceeding justified by a correct interpretation of the mining law; but when the applicant for a patent before this department, who becomes the defendant in a suit commenced by an adverse claimant, in a court of competent jurisdiction, waives his claim, confesses judgment, and thus acknowledges the superior right of the plaintiff to the tract in dispute, he has done all that can be required of him in thus ending the controversy, and should be no longer deprived of a patent for the premises to which he has shown himself legally entitled.

Your decision, holding that Lambard is entitled to a patent, is affirmed for that portion of the premises not covered by the claim known as the "Charles" and the "Irish" mines.

It will be necessary for the applicant to cause the Surveyor-General to forward amended plat and field-notes, describing only that portion of the claim which he has not abandoned.

CORNING TUNNEL *vs* SLIDE LODE.

Under section 2335, an officer authorized to administer oaths *within* the land district may administer the same *without* the district, but within his jurisdiction, where that jurisdiction extends within the land district where the claims are situated.

Acting Secretary Gorham to Commissioner of General Land Office, February 17, 1877.

I have considered the case of the Corning Tunnel, Mining and Reduction Company *vs.* Wm. G. Pell, Samuel Cochran and John W. Nicholson, applicants for patent for 1,500 linear feet of the Slide lode, Gold Hill Mining District, Boulder Co., Central City, Colorado, Land District, on appeal from your decision of November 3, 1876, adverse to the Corning company. The facts of this case are as follows, to wit: On November 24, 1875, W. G. Pell, Samuel Cochran and John W. Nicholson filed an application in the local land office for a patent for 1,500 linear feet of the Slide lode, Gold Hill Mining District. Sixty days notice by publication in the *Weekly Sunshine Courier*, from December 4, 1875, to and including February 12, 1876, was also made, and the plat and notice were properly posted on the claim, and in the Register's office.

A duly certified abstract of title from the records of Boulder County, shows that said lode was discovered July 26th, located July 30th, and recorded July 31st, 1875. Applicants also show a compliance with the law, and have a record title of said location. The Corning Tunnel, Mining and Reduction Company, by F. A. Squires, President, filed an adverse claim against said application, January 20, 1876, and commenced suit by ejectment to determine the right of possession of the tract in question, in the District Court of Boulder County, on February 7, 1876.

Mr. Squires alleges that the Slide lode is within the location of the tunnel site of the company which he represents; that said Slide lode was discovered after the tunnel site, and is a blind lode; that said tunnel site was located in conformity with the mining act of May 10, 1872; that said company have expended a large amount of money;

and that their rights are prior and superior to those of the applicants. A copy of the location notice shows that George C. Corning, A. J. Macky, James A. Carr and Daniel A. Robinson, located and recorded said tunnel site September 18, 1872. They made a second location of the same July 9, 1873, wherein the tunnel is described as seven feet high, six feet wide, and one hundred and thirty feet in length.

Said company have record title to said tunnel site and location. One of your reasons for rejecting the adverse claim is that said claim was not sworn to within the land district where the mining claims are located. The facts relative to this matter are that the adverse claim was sworn to, before A. J. Mackey, Deputy Clerk of the District Court in and for Boulder county; and although there is no testimony showing the exact *part* of the county where the oath was administered, it is shown that the office and residence of said clerk were in the town of Boulder, in said county, and it is probable that the affidavit was made at that place. Now the line between the Central City Land District and the Denver Land District, runs through Boulder county, leaving the *locus* of the town of Boulder in the Denver District, and the mining claims in the Central City District. Section 2335 of the Revised Statutes of the United States provides that "all affidavits required to be made under this chapter, may be verified before any officer authorized to administer oaths within the land district where the claims may be situated." I am of the opinion that under this statute an officer authorized to administer oaths *within* the land district, may administer the same *without* the district, but within the jurisdiction. I do not think the cases referred to in your decision are in point, for the reason that there is a manifest difference between the acts of the Commissioner who has authority only to administer oaths *in* California for Nevada (as in the Dardanelles Mining Company *vs.* The California Mining Company case, Copp's Mining Decisions, 161), and the acts of an officer *in* the State, exercised *within* his *jurisdiction*, where that jurisdiction extends *within* the land district where the claims are located.

Where suit is brought by the adverse claimant, under the 7th section of the act of May 10, 1872, within the time required by law, it is only necessary to pass upon the regularity of the adverse claim, leaving the rights of the parties to be determined by the court.

JUNIPER MINE. (B.)

Where an adverse claim is endorsed, as in this case, "withdrawn and filed" on a later day, the later is regarded as the date of filing the adverse claim.

Evidence of proper publication of notice is sufficient, if the editor and proprietor alleges under oath that the notice was published for sixty days, giving the date of the first and last insertions of such notice, the last insertion being more than sixty days after the first insertion.

As four plats of a mining claim and field notes in duplicate are prepared by the Surveyor-General, it cannot be objected that any plat or field notes are copies and not originals.

The Surveyor-General is not required to make a separate certificate as to the $500 improvements on a claim. Such a certificate is endorsed on both the plat and the field notes of survey of the mining premises in question.

In the absence of any proof or allegation to the contrary, it is to be presumed that the locator of a mine complied with all the requirements of the law before record of his location was made.

Commissioner Williamson to Register and Receiver, Elko, Nevada, March 10, 1877.

On the 6th of September, 1876, John F. Lewis filed in your office an application for patent for fifteen hundred linear feet of the Juniper Mine, Sprucemont mining district, Elko county, Nevada.

The notice and diagram were posted upon the claim from the 28th of August, 1876, to the 12th of November, 1876, and in the Register's office from the 6th of September, 1876, to the 22d of January, 1877.

By the sworn statement of the editor and proprietor of the *Elko Weekly Post*, it is shown that the notice was published in said newspaper for the period of sixty days, the first publication being on the 9th of September, 1876, and the last on the 11th of November, 1876.

On the 6th of November, 1876, the applicant for patent filed in your office a relinquishment to the westerly three hundred and nineteen feet of the claim as applied for, and withdrew his application for patent to the portion relinquished.

Against this application for patent, a protest and adverse claim was filed by the Sprucemont Mining Company, which bears the following indorsement, viz:

"Filed in the Elko Land Office this 8th day of November, A. D. 1876. W. M. STAFFORD, *Receiver.*"

"Withdrawn and refiled in the Elko Land Office this 9th day of November, A. D. 1876. W. M. STAFFORD, *Receiver.*"

This filing cannot be considered as having been made until the 9th day of November, 1876. It is evident that the protestant did not regard this protest as *filed* until the 9th of November; for after leaving the papers with the Receiver on the eighth of the month, the same were withdrawn and placed on file the following day in the local office, where they remained until transmitted to this office by the local officers. It is alleged by the applicant for patent and his attorney, in their sworn statements, that one or more of the papers filed by the protestant were not signed when left with the Receiver on the 8th of November.

It is, however, unnecessary to inquire whether they were signed on the 8th of November or not, as the protest was not *filed* until the 9th day of the same month.

Said filing having been made after the expiration of the sixty days' notice by publication, cannot be considered as an adverse claim.

Section 2325 of the Revised Statutes of the United States, provides that if no adverse claim has been filed against an application for patent at the expiration of the sixty days' notice by publication, it shall be assumed that the applicant is entitled to a patent, and that no adverse claim exists, and "thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter."

This filing can be considered as a protest only, and said protestants are to be considered as parties to the contest for the purpose of *showing from the record* that the claimant has not complied with the requirements of the act, *vide* decison of the Hon. Secretary of the Interior, dated April 30, 1874, in case of John H. McMurdy *et al. vs.* E. S. Streeter *et al.* (See page 15.)

It is urged by the attorney for the protestant that the proof of publication of notice is insufficient.

By the sworn statement of the editor and proprietor of the *Elko Weekly Post*, it is shown that the notice was "published in said newspaper for sixty (60) days, the first publication being on the ninth day of September, 1876, and the last publication on the eleventh day of November, 1876."

Section 2325 Revised Statutes requires the Register to publish the notice "for the period of sixty days."

The editor and proprietor of said newspaper alleges under oath that the notice was published for the period of *sixty days*, and that this fact may be definitely established, he gives in his sworn statement the date of the first and last insertions of such notice, the last insertion being more than sixty days after the first insertion.

The proof of publication of notice in this case is sufficient, and the objection urged is overruled.

It is also urged that the plat and field-notes are copies, and not the originals.

Section 2325 Revised Statutes provides that an applicant for patent may file in the proper land office an application for patent, "together with a plat and field-notes of the claim * * * made by or under the direction of the United States Surveyor General, showing accurately the boundaries of the claim."

In all cases of applications for patents for mining claims the Surveyor General prepares four plats of the survey of the claim, and also prepares the field-notes of such survey in duplicate.

The duplicate field notes and the four plats when found correct are approved by the Surveyor-General.

In the case under consideration one of the plats and a transcript of the field notes of the survey of the claim certified to as correct and duly signed by the Surveyor-General of Nevada, in the usual form, and in accordance with the instructions from this office, were filed with the local officers on the same day that said application for patent was filed.

This objection is accordingly overruled. It is urged that the claimant failed to comply with the law by neglecting to file a certificate of the Surveyor-General that five hundred dollars had been expended upon the claim with the Register, within the sixty days of publication.

The approved plat of the premises for which patent is sought, is referred to as "Survey No. 41, Plat of the John F. Lewis claim on the Juniper lode, Sprucemont Mining District, Elko county, Nevada." The field notes are equally explicit in referring to the said premises.

As before stated, both the plat and the field notes were filed with the application for patent, and upon each is a certificate of the Surveyor General of Nevada, "that the value of the labor and improvements upon the said mining claim is not less than five hundred dollars."

This objection is overruled.

It is urged that no patent can be issued upon said application, as "there is no proof that at the time the Jupiter claim was located, any ledge had been discovered within the limits of the location claimed."

In the original location notice reference is made to the fact that the locator claimed by virtue of such location "one claim of fifteen hundred (1500) feet on this ledge, lode or deposit of mineral-bearing rock," etc.

This claim was recorded in the District Recorder's office, and it is to be presumed in the absence of any proof or allegation to the contrary that the locator had complied with the law in the matter of his location before the Recorder made record thereof. In the sworn statement of the applicant he alleges that he and his grantors "have observed and conformed to the rules, laws and regulations governing this district."

This objection is overruled.

Several other objections have been urged, but after a careful consideration of the same and examination of the papers in the case, no objection is found which can defeat the application for patent.

You will upon the receipt hereof allow J. F. Lewis to make entry of the premises applied for, with the exception of that portion abandoned on the 6th of November, 1876.

BLACK HILLS MINES.

Commissioner Williamson to Hon. John P. Jones, U. S. Senate, April 3, 1877.

Parties should *re-record* their mining claims and locations in the Black Hills, Dakota, to fully insure them in regard to the title thereto, where such locations were made prior to the ratification of the treaty, to wit: February 28, 1877.

SCHOOL SECTIONS.

The title to school sections vests in the State upon survey thereof, if their mineral character is unknown at that date.

Secretary Schurz to Commissioner Williamson, April 4, 1877.

I have considered the case of the State of California *vs.* L. J. Poley and Henry Thomas, involving the right to the N. E. ¼ of S. E. ¼ of Section 36, Township 3 South, Range 13 East, M. D. M., Stockton, California, on appeal from your decision of June 26, 1875.

The State claims under the school grant. Poley and Thomas apply for a patent under the mining act. The township was surveyed in December, 1854, and the patent was filed in the local land office March 14, 1855. The placer mining claims appear to have been located in the year 1858.

It will thus be seen that the question presented is, whether the State of California has a legal title to the land in sections 16 and 36, where it is ascertained, after the survey and identification of said sections, that the land therein is mineral.

By the 6th section of the act of March 3, 1853, the sections above designated were granted to the State of California for school purposes, and when the lands were surveyed the title of the State attached to the same, and, if there was no legal impediment, became a legal title. (18 Howard 173.)

After a very elaborate discussion, my predecessor, Mr. Secretary Delano, held that Congress, by the act of 1853, did not intend to grant, and did not grant, to the State any mineral lands, which by survey are shown to be in sections 16 and 36.* (Copp's Mining Decisions, p. 109.) Accepting this conclusion as the correct one, the question still remains, Did the title to lands in said sections vest in the

*See page 100.

State, upon survey, if their mineral character was unknown at that time, and the same were regarded by the officers of the government as ordinary public lands, not reserved, or otherwise appropriated, but subject to disposal under the general laws of the United States?

It must be held that it did so vest, unless there was an express prohibition existing by virtue of some law.

It would seem that it was the intention of the framers of the act not to grant any of the mineral lands to the State. Mr. Hall said in the House of Representatives, on the day of its passage, "There are some donations made to the State of California, but they are precisely the same as those made to the other States of the Union; but in the clauses making the donations it is provided that the mineral lands and the lands reserved for other public uses shall be excepted. Mineral lands are reserved in all cases." (Cong. Globe, vol. 26, p. 1038.)

In support of this theory, the 12th section of the act may be cited. By its provisions, 72 sections of land were granted to the State for the use of a seminary of learning, and mineral lands were excepted; but it will be observed that the lands were to be selected by legal subdivisions; and by an express provision in section 3 of the act, none but township lines were to be surveyed when the lands were mineral; hence the prohibition was well defined and easily followed. The same remarks will apply to the grant made by section 13 of the act, for the purpose of erecting the public buildings of the State.

By the 6th section of the act under consideration, all the public lands in the State of California were declared subject to the pre-emption laws, except "sections 16 and 36, which shall be, and hereby are, granted to the State for the purpose of public schools in each township." * * * There appear to be no words of limitation or restriction in the clause making the grant. The words are absolute and unqualified; the sections are excepted from the operation of the pre-emption law, together with lands otherwise appropriated or reserved by competent authority, or claimed under a foreign grant, and mineral lands; but I know of no rule of construction of language that would justify an interpretation of the words used in the granting clause that would in effect be a limitation of said grant. This view does not, I think, conflict with that expressed by Secretary Delano; for by section 3 above cited, lands known to be mineral could not legally be surveyed or designated as school lands. In compliance with the doctrine established by the courts, it must, I think, be held that the title vested in the State at the date of survey, when the land was not known to be mineral, or was not treated as such by the Government.

If, following the doctrine of the courts, the grant of school lands takes effect at the date of survey, can the character of the land, subsequently determined, change or affect said title? If it can, for how long a period can such change be effected? If for three years, why not for ten or fifty, or after the title derived from the State has been transmitted through numerous grantees? For lands confessedly non-mineral at the date of survey, may, many years thereafter, be ascertained, through the improvements in mining operations, to be valuable as mineral lands. To maintain such a doctrine, might result in placing in jeopardy the title held by grantees to all the school lands in California, and could only be authorized by the most positive and

clearly expressed provisions of law. In my opinion there is nothing in the act which can thus be interpreted. I must, therefore, hold that the discovery of the mineral character of the land in sections 16 and 36, subsequent to survey, does not defeat the title of the State to the same as school land. The case of Sherman *vs.* Buick (45 Cal. 656) is cited by counsel. In this case, the court held that "the title to each sixteenth and thirty-sixth section, upon its being surveyed, vests absolutely in the State." This decision was reversed by the United States Supreme Court at the present term.

After a careful examination of the case, however, I do not think that the question of the title of the State to mineral lands is involved, or that the decision in any way affects that question.

It is not intended to assert that the title to the lands in said sections passes to the State upon the survey under the provisions of the acts of July 26, 1866, and July 9, 1870, said lands at the date of survey being recognized and regarded as mineral.

The views expressed by Secretary Delano, before referred to, will continue to control the Department in the disposal of lands thus designated.

There are other questions presented in the case under consideration; but if the views above expressed are correct, their consideration is not called for.

PRIDE OF THE WEST MINE.

A protestant in a mining application for patent has no right of appeal from the decision of the Commissioner of the General Land Office.

It is the duty of the adverse claimant to commence suit in proper form, within the required time, and if he trusts the uncertain medium of the United States mail he must abide the consequences, should delay ensue through misfortune or accident. Should the failure to commence suit be the result of the unadvised or the corrupt and dishonest action of his attorney, the Interior Department cannot redress the wrong.

A corrupt or dishonest attorney, on a proper showing, will be debarred from practice before the several Executive Departments of the Government.

Secretary Schurz to Commissioner of General Land Office, April 17, 1877.

I have considered the question presented by your letter of February 12th last, in the matter of the application of C. E. Schoellkopf *et al.*, for a patent for the Pride of the West Mine, Animas mining district, Colorado, Oscar Roedel *et al.*, adverse claimants. (See page 213.)

The question for determination is, Can the adverse claimants be considered, by this Department, as parties in interest, and therefore entitled to an appeal? If so, it results from the fact that they have filed notice of an adverse claim, and commenced suit within the period of time required by the statute.

The adverse claim was filed December 8, 1875. From the certificate of George A. Bute, Clerk of the District Court for the 3d Judicial District of Colorado, it appears that C. Husted and Wilson and Taylor, attorneys for O. Roedel *et al.*, plaintiffs, commenced suit January 31, 1876, against C. E. Schoellkopf *et al.*, defendants, involving the possession of the premises, or a portion of the premises, in controversy.

It will thus be seen, from the record, that the suit was not commenced within the period required by law, viz: within thirty days after the filing of the adverse claim.

There is on file an affidavit of Charles Husted, dated January 8,

1876, stating that on the 29th day of December, 1875, as attorney for Oscar Roedel *et al.*, he mailed, postage-paid, and addressed to the Clerk of the District Court, a declaration and praecipe in ejectment, that Schoellkopf *et al.* were defendants, and that the premises involved were those now in dispute.

On the 10th of August, 1876, Oscar Roedel, one of the adverse claimants, and one of the Plaintiffs, filed an affidavit asserting that Charles Husted, his attorney, employed for the purpose of filing the adverse claim and commencing suit, corruptly conspired with Schoellkopf, the applicant, to delay the commencement of the suit beyond the period of thirty days after filing the adverse claim. The allegations of Roedel are denied by the affidavit of Schoellkopf.

I shall not attempt to reconcile these conflicting statements. It is apparent that the suit was not actually commenced within the period required, for by the laws of Colorado it is provided that "the action of ejectment shall hereafter be commenced by the filing of a declaration in the office of the district court of the proper county, whereupon a summons shall issue directed to the sheriff for service as in other cases." The mailing of a declaration addressed to the clerk of the court, cannot be considered the filing of the same in the office of the district court, and the commencement of a suit.

The provisions of the statute requiring the suit to be commenced within a certain time are mandatory. The time in which such action is to be taken is limited, and it is not within the province of this Department to extend the time fixed; no discretion or power to thus act is vested by this statute in the Department. Congress, no doubt for wise purposes, thus restricted the authority of the executive officers of the government, and opened wide the doors of the courts to the adverse claimant. It is his duty to commmence his action in the proper form, and if he elects in so important a matter as the filing of his declaration, to trust to the uncertain medium of the United States mail, he must abide the consequences of delay, should delay ensue through misfortune or accident; or should the failure to commence suit in time be the result of the unadvised or the corrupt or dishonest action of his attorney, it is a matter that the Department is powerless to redress, he must seek for relief in the proper tribunal—the courts are open, and in them he may assert his rights. (See case of Morse *vs.* Streeter, Copp's U. S. Mining Decisions, p. 127, and the case of O. D. Lambard, *Copp's Land-Owner* for March, 1877.)

Should a charge against an attorney, so grave as the one presented in this case, be clearly established, the Department, to protect its own honor and the interests of citizens, would debar the offender from practice before the executive offices of the government, but it cannot restore the right of a client thus corruptly sacrificed.

In this case, Roedel *et al.* can be considered only in the light of protestants, hence an appeal from your decision on the merits of the application can not be entertained.

SURVEY.

A survey under the mining act, does not withdraw the land embraced thereby from sale or subsequent survey unless followed by an application for patent.

Instructions in cases where a party desires survey made of a tract already surveyed.

Commissioner Williamson to Surveyor-General Campbell, Denver, Colorado, April 20, 1877.

This office has been informed that cases frequently arise where parties secure a survey under the mining laws of lode, mill-site or placer claims, and fail to file an application for patent therefor, and the question is presented whether a second survey may be approved for the same premises. An application for patent withdraws the lands therein described from a subsequent application until the first application is withdrawn or rejected. But a survey, unless followed by an application, does not withdraw the premises therein described from survey or entry by any qualified party who shows compliance with the terms of the act. To hold that a survey under the mining act withdraws the land embraced thereby from sale, or subsequent survey, would be to place it in the power of any party who might secure a survey to a given claim, to prevent the government from disposing of its title to that portion of the public domain. Where a party desires a survey made of a tract already surveyed, you will require him to file with you a certificate from the Register of the local land office where such claim is situated, that there is no application for patent pending under such prior survey. The field-notes of the subsequent survey should show that they embrace the same premises as those described by such prior survey, giving the number and the name of the claimants under such prior survey. If conflicts exist they should be shown in accordance with instructions of November 5th, 1874.

DEPUTY MINERAL SURVEYORS.

Commissioner Williamson to Surveyor-General Campbell, Denver, Colorado, April 20, 1877.

The law only authorizes the appointment of *competent* surveyors, and when in the discharge of your duties you become convinced that a deputy who has received an appointment is *incompetent* or careless in the discharge of his duties, you will promptly revoke his appointment. You will require *each deputy mineral surveyor* to enter into bonds with two or more sureties in the sum of $10,000, for the faithful performance of his duties in the survey of mining claims under the mining statutes.

DELINQUENT CO-OWNERS.

Proof required in applications for patents where proceedings were had against co-owners of a mine who failed to pay their share of the required expenditure.

Commissioner Williamson to D. P. Whedon, Silver Reef, Utah, June 9, 1877.

Where a party proceeds against one or more of his co-owners under section 2324 of the Revised Statutes of the United States, he should file with his application for patent a copy of the original notice of location; an abstract of all conveyances made of the claim; a copy of the notice published to delinquent co-owners—which notice should embrace the names of all delinquents—to which must be attached the affidavit of the publishers of the paper in which the notice was inserted that the attached notice was published for the period of ninety consecutive days, giving dates; the affidavit of the claimant or claimants who have made the required expenditures—corroborated by the sworn

statement of two or more disinterested witnesses—showing the character and extent of the improvements made upon the claim, and the time when such improvements were made.

There must also be filed the sworn statement of the claimant or claimants who had made the required expenditures as to whether or not either of the parties whose names appear in such published notice contributed his proportion of the required expenditure either during the ninety days notice by publication or the succeeding ninety days.

The evidence must be full, positive and explicit, upon all these points.

UNION COMPANY'S MINE.

An adverse claim to be considered must be sworn to by the party claiming adversely and not by an attorney. Hearings may be had to determine whether the legal expenditure has been made on a mine for which patent is desired.

An expenditure of more than fifteen hundred dollars by the owners of an adjoining mine on the portion of a tunnel running through the premises embraced in an application for patent, in case the applicants were to have an interest in such tunnel, is considered an expenditure under the mining law upon the claim applied for.

Commissioner Williamson to Register and Receiver, Shasta, California, June 11, 1877.

On the 1st of March, 1876, George K. Willard, Prince T. Baker, C. W. Kingsbury and John H. Shuffleton filed in your office an application for patent for twelve hundred linear feet of the Union Company's mine.

On the 28th of March, 1876, J. B. Batcheller filed in your office a protest and adverse claim against said application for patent. In his sworn statement he alleges that to the best of his knowledge and belief the required amount has not been expended upon said claim, and that N. S. Batcheller is the owner of a portion of said claim.

On the 5th of April, 1876, J. B. Batcheller filed in your office a withdrawal of said protest and adverse claim, in which he states that he makes said withdrawal "without prejudice to my rights as contestant in the above case, on grounds other than those specified in said affidavit."

This filing could not have been considered as an adverse claim, as it was not sworn to by a person claiming adversely. In said sworn statement he does not allege ownership, but alleges that N. S. Batcheller owns an interest in said claim.

Section 2326, Revised Statutes of the United States, declares that "where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same."

The Hon. Secretary of the Interior, on the 24th of November, 1873, in the case of the Jenny Lind Mg. Co., *et al.*, *vs.* the Eureka Mg. Co. decided "that the *jurat*, to the adverse claim * * * must be made by the party, and cannot be made by an attorney."

On the 29th of April, 1876, J. B. Batcheller filed in your office a protest against said application, alleging in his sworn statement that the required amount—five hundred dollars—has not been expended upon said claim, and requesting that a hearing be held in regard to this matter.

You fixed the 1st of September, 1876, as the day for the hearing.

The testimony submitted shows that on the 2d of May, 1876, the

claim under consideration—the Union Company's claim on the 1st Extension North of Chicago mine—was located.

There has been filed in this case a copy of the record of location of this claim from the office of the Recorder of South Fork mining district, which sets forth that said claim was located by the following named parties, viz: J. H. Shuffleton, William Payne, P. T. Baker, and C. W. Kingsbury, each taking three hundred feet, and Geo. E. Vance and William Laury, each taking one hundred and fifty feet, aggregating fifteen hundred feet. No abstract of title has been filed, or copy of any conveyance from either of said locators.

In the sworn statement of two of the original locators, to wit: C. N. Kingsbury and P. T. Baker, they allege that the original notice of location was made out in the names of the first four parties named in the record, and that twelve hundred feet only were embraced in such location, and the last two names were added to such notice before record without their knowledge or consent.

J. B. Batcheller alleges in his sworn statement that Baker, one of the said locators, came to his office, and requested him to draw up the notice of location in the name of Kingsbury, Baker, Payne and Shuffleton, and consented that the names of Vance and Laury should be added thereto at the request of the affiant.

This is denied by Baker in his sworn statement.

It appears from the sworn statement of Batcheller, that while acting as Recorder of said district in 1866, and since that date, he has entertained the peculiar idea that the notices of locations of mining claims filed with him as Recorder, are his own private property.

All of the witnesses testify that this claim was located by Shuffleton, Payne, Baker and Kingsbury; but Batcheller alleges that the names of Laury and Vance were added to the notice at his request.

From the evidence submitted it is not clearly shown that the locators consented to the addition of these two names to their location notice; but on the contrary, as said applicants apply for twelve hundred feet only, the number of feet actually located by them, and as neither Vance nor Laury nor any one claiming under them has asserted an adverse claim, it would appear either that those two names were not rightfully upon said notice, or if rightfully the notice, that they claimed three hundred feet of said mine lying northerly of the twelve hundred feet applied for.

It is therefore held that upon the applicants furnishing satisfactory evidence as to what disposition Wm. Payne made of the interest located by him, and how G. K. Willard acquired any interest in said premises, that the title of the applicants to the premises claimed will be considered sufficient. It is also urged that the required amount of five hundred dollars had not been expended upon the claim prior to the date of the application for patent.

The testimony shows that said applicants had expended upon the claim about two hundred and forty dollars prior to their application for patent and about two hundred and seventy since.

In addition to this it appears from the evidence submitted, although the testimony is somewhat contradictory, that Woodward and Walsh, in 1867, had control of the Chicago mine, which adjoins this claim on the southwesterly end; that an agreement was made between Wood-

ward and Walsh, and the claimants of the First Extension North of the Chicago mine, permitting Woodward and Walsh to construct a tunnel through the claim under consideration to the Chicago mine, and granting them certain dumping privileges in consideration of which the First Extension North of the Chicago claimants were to have an interest in said tunnel. It also appears that Woodward and Walsh expended about fifteen hundred dollars upon this tunnel, and performed no more work upon it; that, in the year 1874, E. W. Roberts the then superintendent of the Chicago mine, under a similar agreement to that made with Woodward and Walsh, prosecuted work upon said tunnel and extended the same about fifty or sixty feet. Although said applicants had not expended upon their claim the required amount in *cash* prior to the date of their application for patent, I am of the opinion that the expenditure upon said tunnel should be considered as expenditure upon this claim as well as upon the Chicago, in accordance with the terms of said agreement.

Said protest is accordingly overruled, and you will allow said application for patent to proceed.

SURFACE GROUND.

No patent can issue for a vein or lode without surface ground, and as the surface which overlies the apex of a vein or lode discovered in a tunnel can only be ascertained by sinking a shaft or by following a lode up on its dip from the point of discovery, no survey of such a lode will be made until the exact surface ground is first ascertained as above.

Commissioner Williamson to Surveyor-General Campbell, Denver, Colorado, August 31, 1877.

In your letter of the 7th inst., you inquire how survey shall be made of vein or lode claims discovered in a tunnel.

Section 2323 of the Revised Statutes of the United States provides that the owners of a tunnel run for the development of a vein or lode, or for the discovery of mines "shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface."

Section 2320 Revised Statutes provides that "no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located," and declares the width of surface ground which may be embraced by a location.

Section 2322 provides that locations so long as they comply with the laws of the United States and with State, Territorial and local regulations not in conflict with the laws of the United States governing their possessory title, "shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extending downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface location; * * * and nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another."

Section 2324 requires that all locations "must be distinctly marked on the ground, so that its boundaries can be readily traced."

Section 2325 provides that a patent for any *land* located for valuable deposits may be obtained in the manner therein provided, by any person, association or corporation authorized to locate a claim who have claimed and located a piece of land for such purposes."

This section also requires the plat and field notes to show "accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground," and makes it the duty of the applicant to post a copy of the plat and notice upon the "land embraced in such plat."

From the foregoing provisions of law, it will be seen that no patent can issue for a vein or lode without surface ground, and as the surface which overlies the apex of a vein or lode discovered in a tunnel can only be ascertained by sinking a shaft or by following a lode upon its dip from the point of discovery, a survey of a lode of this kind cannot be properly made until it has been definitely determined, as above indicated, what portion of the public domain overlies the apex of such lode.

WOMEN AS LOCATORS.

Commissioner Williamson to Register and Receiver, Eureka, Nevada, November 13, 1877.

The law makes no distinction in this regard on account of sex.

Mining claims may be located and held by either males or females upon compliance with law.

J. H. RUSSELL LODE.

Commissioner Williamson to Surveyor-General Mason, Helena, Montana, November 30, 1877.

It is urged that a copy of the notice of location did not accompany the application for survey.

A certified copy of the location notice is shown to be on file in your office, but the date of the filing of the same in your office is not shown.

In all cases a certified copy of the location notice from the office of the proper recorder should accompany the field notes made by the deputy.

There *may* have been an irregularity *in regard to the time* of filing the copy of the notice of location in your office, but as it is on file in your office, the Surveyor-General would not be authorized to withhold his approval of said survey on this account.

It is also urged that the labor and improvements upon said claim do not exceed the sum of five hundred dollars.

Section 2325 of the Revised Statutes of the United States requires the claimant at the time of filing his application for patent, or at any time thereafter within the sixty days of publication, to "file with the Register a certificate of the United States Surveyor-General that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors."

In the case under consideration, if you are not satisfied from the evidence on file that the required amount has been expended upon the said J. H. Russell lode by said applicant or his grantors, you will require further evidence upon this point before furnishing your certificate.

EXPENDITURE IN THE PAST.

Commissioner Williamson to Wm. S. Merrell, Cincinnati, Ohio, Dec. 13, 1877.

The fact that a large expenditure has been made upon a claim in the past will not relieve a claimant from the necessity of performing the required *annual* labor.

ACTUAL AND REQUIRED EXPENDITURE.

Commissioner Williamson to Hon. A. A. Sargent, U. S. Senate. Dec. 21, 1877.

A party who contributes his proportion of the *required* expenditures can retain his interest in the mine. If a party fails to contribute his proportion of the *actual* expenditures upon a mining claim, the remedy must be sought elsewhere than in this office.

TIMBER ON TUNNEL SITES.

Commissioner Williamson to John Hunter, Washington, D. C., January 16, 1878.

It will be seen that where there has been a total abandonment of, or a failure to prosecute work on a tunnel for six months, the party or parties claiming such tunnel forfeit all right to the *undiscovered* veins on the line of such tunnel.

Should either of the parties claiming such tunnel refuse or fail to contribute his proportion of the expenditures required by section 2324 upon a *lode owned by them*, or in running a tunnel for the purpose of developing a *particular lode or lodes owned by them*, the co-owners who have made the required expenditure may proceed against such delinquent co-owners in the manner provided in said section 2324.

You inquire if a company can claim all timber upon a tunnel site? It will be observed that a tunnel site under the law cannot exceed in length three thousand linear feet, and that its width is the *actual width of the tunnel* itself. A tunnel owner would have the right to the timber growing upon this tract so long as he complied with the law in running such tunnel.

THEODORE H. BECKER.

In case a mill-site, for which an application for patent is made, is alleged to be non-mineral in character, though embraced in an application for patent for a placer claim, a hearing may be ordered to determine the facts in the matter, improvements, etc.

Commissioner Williamson to Register and Receiver, Central City, Colorado, January 25, 1878.

With your letter of the 10th inst., you transmitted the papers in case of the application of Theodore H. Becker, for patent for the premises embraced by survey No. 299, as a placer claim.

On the 14th instant, you transmitted the papers in case of the application of the Sunshine Mining Company, for patent for lot No. 728, as a mill site.

It is shown by the plat and field notes that lot No. 728 is embraced within the exterior boundaries of said lot No. 299.

Among the other papers forwarded are found sworn statements in which it is alleged that the premises embraced by survey No. 728, are

not mineral in character, and that the only improvements made or labor performed upon said premises during the last seven years were made and performed by said Sunshine Mining Company. That no mining has been done upon the premises embraced by lot 299, during the past seven years, except a prospect hole commenced by William Gilson and James Dunn, but never completed.

To the end that this office may be fully advised in the premises, you will fix a day for a hearing, and receive testimony upon the following points, viz:

1st. As to whether or not the premises embraced by lot No. 728 are mineral in character, and whether the same are more valuable for placer mining or mill-site purposes.

2d. What improvements have been made upon the premises embraced by lot 728, and by whom made.

3d. The extent and amount of improvements or labor upon the premises embraced by lot 299, and whether or not the improvements and expenditures were made by the applicant for patent for said lot 299, or his grantors.

It is desired that the evidence should be full, positive and explicit.

That the hearing may be attended with as little expense as practicable, you will direct the same to be held before some person authorized to administer oaths, at Idaho Springs, Colorado.

WOODVILLE PLACER.

Hearings may be ordered under the mining laws to ascertain necessary facts upon which to base a decision.

Secretary Schurz to Commissioner of General Land Office, February 19, 1878.

I have considered the appeal of L. W. Wood *et al.*, from your decision of August 18, 1877, rejecting their application for a patent for the Woodville Placer Mine, lot No. 43, township 16 north, range 9 east, M. D. M., Sacramento, California.

This tract was located in 1855, and from that time until 1861 worked continuously, and a large sum of money expended in its development.

In 1858 and 1860, C. H. Seymour became by purchase the owner of $\frac{8}{20}$ of said mine, known as the Nebraska claim, which interest he now asserts, together with an additional interest of $\frac{6}{20}$ obtained from the locators, or their grantees.

There is no copy of the local mining laws governing the location and holding of placer claims, in the district wherein the tract in question is situated, filed in the case, by which it can be ascertained whether or not the original locators and their grantees have complied with the local laws and regulations of miners in that district so as to entitle them to the right of possession of said tract, as against adverse claimants. If they have thus complied with the local laws, the land is not subject to relocation by other parties, until an abandonment by the original locator is established.

In the application of Wood *et al.*, filed February 24, 1874, the applicants assert that they located the tract on, or about, December 23, 1873; they also assert, that they obtained peaceable possession of the land at that time, and have remained in possession since. It is con-

tended by them that the location of the Nebraska claim has been abandoned. On the contrary, Seymour asserts that the original locators and their grantees have not abandoned said claim, but have remained in possession of the same according to local laws and regulations.

There is on file in the case a transcript of the proceedings in the case of C. H. Seymour *vs.* L. W. Wood *et al.*, in the Supreme Court of California, in which it appears that Seymour brought suit in the District Court of the 14th Judicial District of California, to recover possession of $\frac{8}{20}$ of the ground of the Nebraska mining claim, and judgment was rendered in his favor. The legitimate conclusion to be drawn from this judgment is, that the jury found that the original Nebraska location had not been abandoned. In your decision of August 18th last, you held, in substance, that in view of this judgment of the court, the fact was established, that the prior location had not been abandoned, and rejected the application of Wood *et al.* for a patent.

It is competent for the department to take the judgment of the District Court of California into consideration, as evidence, on a question of fact; but I am of the opinion that its judgment should not be conclusive. Before a correct decision can be rendered in this case, the facts in relation to the abandonment or non-abandonment of the prior location must be determined.

The evidence now on file is ex parte, each claimant to the land asserting his superior right thereto, and, as said rights must depend on facts, you are instructed to order a hearing to ascertain, if possible, the truth in relation to the abandonment of the Nebraska claim.

If the applicants establish the fact that they obtained peaceable possession of the ground, have remained in possession of the same, and have the right of said possession, their application must be recognized. The claim may be defeated by establishing the fact that the ground was not subject to location, and any party has the right, as a protestant, to submit evidence on that point. Should it be established that, by compliance with the mining laws, and customs, and regulations, prior locators have the right of possession, the tract cannot be considered as subject to re-location, and the application must be rejected. The evidence must be confined to the question of abandonment, and the status of the parties will not be changed by the order for a hearing. [See C. T. Wheeler, October 21, 1880.]

I concur with you in the opinion expressed in your letter of March 22d last, that Seymour cannot be regarded as an adverse claimant under the statute, and also in the opinion expressed in your decision of August 18th last, that the publication of the application, although somewhat irregular, was not fatal to the application, as it was a substantial compliance with the law.

A hearing is not expressly provided for in the act of May 10, 1872, but I am clearly of the opinion that it is within your jurisdiction, under the supervisory power conferred upon you by the first section of the act of July 4, 1836, vesting in the Commissioner of the General Land Office control in all matters pertaining to the disposal of the public lands, to order hearings, when it is necessary, for the purpose of ascertaining the facts in a given case, without which it is impossible to render an intelligent decision.

Due notice of the hearing should be given to all parties in interest.

When the evidence, with the opinion of the local officers thereon, is received, the case should be determined upon its merits.

Extract from letter of Commissioner Williamson to Register and Receiver, Sacramento, California, March 22, 1877, *in this case.*

Where parties fail to file their adverse claims within the time and in the manner provided by law, they cannot subsequently be permitted to assert an adverse claim before this office.

If Mr. Seymour has a right to any portion of said premises, which this office cannot take cognizance of by reason of his having failed to assert the same as provided by the statute, his remedy will be in a court of equity, to have the patentees declared trustees and compelled to convey the legal title. (Stark *vs.* Starrs, 6 Wall. 402; Johnson *vs.* Towsley, 13 Wall. 72.)

STATE OF CALIFORNIA.

The State of California is not entitled to select and locate lands in lieu of those lost to the State by reason of their being mineral in character.

Commissioner Williamson to Register and Receiver, Shasta, California, April 29, 1878.

The question is presented whether the State of California is entitled to select and locate lands in lieu of those lost to the State, by reason of their being mineral in character. The 7th section of the act approved March 3, 1853, 10th Statutes, 244, provides "that where any settlement by the erection of a dwelling house, or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections, before the same shall be surveyed, or where such sections may be reserved for public uses or taken by private claims, other land shall be selected by the proper authorities of the States in lieu thereof."

Section 6 of the act approved July 23, 1866, 14th Statutes, 218, provides that said act of March 3, 1853, "shall be construed as giving the State of California the right to select, for school purposes, other lands in lieu of such sixteenth and thirty-sixth sections as were settled upon prior to survey, reserved for public uses, covered by grants made under Spanish and Mexican authority or by other private claims, or where such sections would be so covered if the lines of the public survey were extended over such lands."

No mention is made of these lands for such portions of the 16th and 36th sections as may be mineral in character. It is urged, however, by the attorneys for the State that *mineral lands are reserved for public uses*, and hence the State is entitled to lieu lands therefor.

The Hon. Attorney-General, in his opinion of 4th ultimo—Copp's *Land Owner*, vol. 5, page 12—states "that the words 'reserved for public uses' as employed in the 6th section of the act of 1866, were not meant to cover those lands which passed to the State of California under the swamp land act of September 28, 1850; that they refer solely to reservations made for the purposes of the General Government, and the same words occurring in the 7th section of the act of March 3, 1853, must be deemed to have the same meaning and scope."

This office must therefore deny the application of the State to select and locate lieu lands for such portions of sections 16 and 36 as are mineral in character.

SUTRO TUNNEL *vs.* OCCIDENTAL.

The word "developed" in the first section of the Act of July 25, 1866, does not signify the same thing as "discovered;" but the words "discovered and developed" as used therein, refer to separate and distinct events, the happening of either of which was sufficient to perfect a grant of the right of way and its necessary consequences—the right to construct a tunnel was granted along any lode discovered or developed by the main tunnel.

The condition specified in the third section of said Act, should not be inserted in any patents, except for the Comstock lode mines, unless it be made to appear *prima facie* that the mine or mines have been drained, benefited or developed by the Sutro Tunnel.

Secretary Schurz to the Commissioner of the General Land Office, Aug. 30, 1878.

I have considered the case of the Sutro Tunnel Company *vs.* The Occidental Mill and Mining Company, situated on the Brunswick lode, Silver Star Mining District, Storey County, Nevada, on appeal from your decision of December 4, 1877, adverse to the Occidental Company.

The facts of this case are as follows, viz: On September 10, 1873, the Occidental Mill and Mining Company made proof of their compliance with the requirements of the mining laws, and entered the lands embraced in the mill and mining claims of said company, containing $34\frac{67}{100}$ acres in the E. ½ of S. W. ¼ Section 33, Township 17 N., Range 21 E., and Sections 4 and 9, Township 16 N., Range 21 E., Mount Diablo Meridian. On June 5, 1875, Messrs. Shellabarger and Wilson, attorneys for the Sutro Tunnel Company, filed the following protest against the issuance of patent for the Occidental mine, viz: The Sutro Tunnel Company, as assignee and successor in interest of A. Sutro, under the act of Congress of July 25, 1866, entitled "An act granting to A. Sutro the right of way, and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode in the State of Nevada, respectfully shows that the claim described as above in the application made and now pending in your office is either within two thousand feet of the tunnel of said company, and therefore, under the provisions of said act, not patentable, or else is within that district in which all claims or mines will be drained, benefited, or developed by said tunnel, and the owner of said claim holds the same subject to the condition named in the third section of said act.

"And said Tunnel Company hereby demands that if said claim is within the 2,000 feet aforesaid (such fact being ascertainable by the public records), no grant or patent be issued therefor, and hereby protests against the issuing of any such grant or patent; or if said claim is not within the said limit of 2,000 feet, the said Tunnel Company hereby demands that the condition named in the third section of the act be inserted in any grant from the United States for said claim without the insertion of said condition."

On August 14, 1876, Messrs. Shellabarger and Wilson, on behalf of said Tunnel Company, filed a statement in which they alleged that the Occidental mine was on a lode which had already been drained by the Sutro Tunnel, in consequence of which this mine, which for a long time had been flooded with water, had been thoroughly drained, which fact had been recently discovered; they therefore asked that a hearing be ordered to enable them to prove said allegations.

By your letter of August 19, 1876, a hearing was ordered before the local officers, to determine whether this mine had been drained, benefited or developed, by the Sutro Tunnel. The hearing commenced before the local officers on October 4th, 1876, but the testimony was not transmitted to your office until November 9, 1877. Much of this testimony was not signed by the witnesses, and lacked the jurats of the local officers, and you refused to consider it as evidence in the case. Your action in rejecting said testimony is approved for the reasons stated.

You decided that although the testimony did not conclusively establish the fact that said mine had been drained, benefited or developed by the tunnel, the Tunnel Company had nevertheless made out a *prima facie* case, and were entitled to have the condition contained in the 3d section of the Sutro Tunnel Act of July 25, 1866, inserted in the patent to be issued for said mine, and the right of the Tunnel Company to royalty could then be settled by the courts.

On February 25, 1869, your predecessor, Mr. Commissioner Wilson, addressed a letter to Mr. Sutro, in which he discussed at length the rights and privileges granted by the Tunnel Act of July 25, 1866, and held that the only mines or lodes affected by said act were the following:

"1. The mines on the Comstock lode. 2. Those lying within 2000 feet of the proposed line of said tunnel. 3. Such new lodes as may be discovered or developed by the construction of the tunnel, the existence of which remained unknown until thus brought to light." This decision was affirmed by my predecessor, Secretary Cox, on July 5, 1870.

It is contended by counsel for the mining company, that the above mentioned decision is final and conclusive against the Tunnel Company, upon the points raised in this controversy, and that said questions are *res judicata*.

Mr. Bouvier (2 Law Dict., p. 465), states the law of *res judicata* to be as follows: "In order to make a matter *res judicata* there must be a concurrence *of the four conditions* following, viz.: Identity of the things sued for, identity of the cause of action, identity of the persons and parties to the action, identity of the quality of the persons for or against whom the claim is made."

The records of your office show that the decision of Commissioner Wilson was drawn out by letters from Mr. Sutro, relative to his rights under the tunnel act. The Occidental Mill and Mining Company was not a party to that proceeding, and is not, therefore, estopped by it; neither can said company take advantage of said decision by way of estoppel, because it was a stranger to the record.

The questions involved in this case may be briefly stated as follows, viz:

1. Has the Sutro Tunnel Company proven that the Occidental mine has been drained, benefited or developed by its tunnel?

2. If the proof shows that the mine has been drained, benefited or developed by said tunnel, but that is located outside of the limit of 2,000 feet named in the Act of July 25th, 1866, is the Tunnel Company entitled to have the condition contained in the 3d section of said Act inserted in the patent to be issued for said mine?

The testimony in this case shows that the northerly end of the Occi-

dental mine is situated about 3,100 feet in a southerly direction from shaft No. 3, of the Sutro tunnel; that the trend of said mine is nearly north and south, the dip to the east, and that the strata of the country run nearly north and south; that said mine is worked through two tunnels; that in 1872 several miner's inches of water (174,054 gallons, or 20,333 cubic feet each) flowed from the lower of those tunnels, and was used for milling purposes by the Occidental Company; that when the pumps were at work at shaft No. 3 of the Sutro tunnel there was a marked diminution in the flow of water in said mine, and that the mine has now become dry; that shaft No. 3 has been sunk to the depth of 459 feet, but not to the level of the Sutro tunnel.

It is also shown that in running the second tunnel of said mine, water was encountered at about 800 feet, where the ledge was struck; that there is a seam of clay from 3 to 4 feet in thickness, very close to the east casing of said mine, and that in running the Sutro tunnel similar clay was taken out; that the mouth of the second tunnel of said mine is situated about 5,000 feet from shaft No. 3 of the Sutro tunnel, with mountains and valleys intervening. The level of the Sutro tunnel is shown to be about 1,600 feet below the upper croppings, and about 1,200 feet below the second tunnel of said mine; it is also shown that large quantities of water were encountered in the Sutro tunnel from a point 1,400 feet east to a point 900 feet west of shaft No. 3.

While the testimony presented does not show conclusively that said mine has been drained, benefited or developed by said tunnel, I agree with you in the conclusion that it does show *prima facie* that said mine has been drained, although this conclusion is reached only by tracing effects to what must be considered their real causes.

Upon the second proposition it is claimed by counsel for the tunnel company that said condition must be inserted, because said company is authorized to run a branch tunnel on the Brunswick Lode.

The first and third sections of the act entitled "An act granting to A. Sutro the right of way, and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode in the State of Nevada," approved July 25, 1866, are in the following words, viz:

Be it enacted, etc., That for the purpose of the construction of a deep draining and exploring tunnel to and beyond the "Comstock Lode," so called, in the State of Nevada, the right of way is hereby granted to A. Sutro, his heirs and assigns, to run, construct and excavate a mining, draining and exploring tunnel; also to sink mining, working or air shafts along the line or course of said tunnel, and connecting with the same at any point which may hereafter be selected by the grantee herein, his heirs or assigns. The said tunnel shall be at least eight feet high and eight feet wide, and shall commence at some point to be selected by the grantee herein, his heirs or assigns, at the hills, near Carson river, and within the boundaries of Lyon county, and extending from said initial point in a westerly direction seven miles, more or less, to and beyond said Comstock lode, and the said right of way shall extend northerly and southerly on the course of said lode, either within the same, or east or west of the same; and also on or along any other lode which may be discovered or developed by the said tunnel."

"SEC. 3. *And be it further enacted,* That all persons, companies or corporations, owning claims or mines on said Comstock lode, or any other lode drained, benefited or developed by said tunnel, shall hold their claims subject to the condition (which shall be expressed in any grant they may hereafter obtain from the United States) that they shall contribute and pay to the owners of said tunnel, the same rate of charges for drainage or other benefits derived from said tunnel or its branches, as have been or may hereafter be named in agreement between such owners and the companies representing a majority of the estimated value of said Comstock lode, at the time of the passage of this act." (14 Statutes at Large, pp. 242, 243.)

Under the first section, I think it is clear that neither the tunnel nor its branches can be lawfully constructed along any lode except where the right of way is granted. By the words "and also on or along any other lode which may be discovered or developed by the said tunnel," the right to construct branch tunnels is made contingent upon either the discovery or development of a lode other than the Comstock.

The record shows that the Brunswick lode was discovered many years before the passage of the act of July 25, 1866, and the Occidental mine was located thereon in March, 1863. This lode was not, therefore, "discovered" by the tunnel. This narrows the inquiry to the single question whether the Sutro tunnel has "developed" the Brunswick lode.

Mr. Commissioner Wilson was of the opinion that the word "developed" as used in the first section of the act above quoted was simply interpretive of the word "discovered" and signified one and the same thing. I am unable to agree with Mr. Wilson's construction of this section. The words "discovered or developed" as used therein, have reference, in my opinion, to separate and distinct events, the happening of either of which was sufficient to perfect a grant of the right of way, and its necessary consequences. Many lodes had already been discovered on the line of the projected tunnel at the time the act was passed, and it is not to be presumed that the law-makers by the use of the word "discovered" had reference to them, or deemed them capable of discovery by the Sutro tunnel, yet there was every reason for believing that they might be developed thereby. If the word "discover" did not refer to known lodes, and the words "or developed" are subordinate to and interpretive of that word, it follows as a logical sequence that the words "and also on or along any other lode which may be discovered or developed by said tunnel," granted no right of way except along blind lodes discovered in the tunnel. Such a construction would be equivalent to a nullification of this important part of the grant. It cannot be doubted that a known lode, when intersected by the main tunnel, might be, greatly developed thereby; and if it was so intersected and developed, there can be no reasonable doubt that the right of way was granted for the construction of a branch tunnel along it, and the right to royalty would necessarily follow when the several mines located thereon were drained, benefited or developed thereby.

I am of the opinion, therefore, that the right to construct a tunnel was granted any lode discovered or developed by the main tunnel, and that this right cannot be restricted unless there is something in the act

which in terms, or by necessary implication, limits its operation. That such limitation does not exist is clear, I think, from the language used in the third section of the act, which provides that "all persons, companies or corporations, owning claims or mines on said Comstock lode, or any other lode drained, benefited, or developed by said tunnel, shall hold their claims subject to the condition," etc. There is nothing in this language to indicate a limitation of the right of the Sutro Tunnel Company to extend their explorations. On the contrary, the language seem to imply that those explorations may be extended to any distance, and that all persons, companies, or corporations, whose mines are drained, benefited, or developed thereby, shall be liable to pay the royalty agreed upon in the stipulation mentioned, provided always that the lode was discovered or developed by the main tunnel. The word "branches" indicates that it was contemplated that more than one branch tunnel would be run, otherwise the word "branch" would have been used. The fact, therefore, that the Occidental mine is situated more than 2,000 feet from the main tunnel, will not prevent the Sutro Tunnel Company from collecting its royalty from the owners of said mine, providing it shall conclusively establish the fact that said mine has been drained, benefited, or developed thereby; and while it is true that the testimony in this case does not conclusively show that the Brunswick lode was cut by the Sutro tunnel, nor that the Occidental mine has been drained, benefited, or developed thereby, still it does appear *prima facie* that said lode was cut by the Sutro tunnel, and that it has been drained thereby; and as there is no limitation in the act as to the distance at which mines shall be situated from said tunnel, if drained, benefited or developed thereby, which would exempt them from the condition of the third section, I am of the opinion that Mr. Sutro, his heirs and assigns, are entitled to have the condition provided in the third section inserted in the patent for said mine, when the same issues.

Counsel for the Sutro Company urge that the condition prescribed in the third section shall be inserted in all patents for mines situated within a reasonable distance of said tunnel, whether located upon the Comstock lode or some other lode, and whether within or without the limit of 2,000 feet named in the act.

I am unable to concur in this view. The right to royalty to Mr. Sutro, his heirs or assigns, was granted on the condition that the owners of mines should pay a certain royalty, providing their mines were drained, benefited or developed by the proposed tunnel. If the mines are not drained, benefited or developed by said tunnel, the act does not give to Mr. Sutro, his heirs or assigns, the right to collect any royalty. Whether the Sutro Tunnel Company is entitled, therefore, to such right, must always be a question of fact to be established by proof; and while it is true that the condition prescribed in the third section of said act should be inserted in patents issued for mines on testimony establishing *prima facie* that said mine has been drained, benefited or developed, still I am of the opinion that said condition should not be inserted in any patents except in patents for mines located upon the Comstock lode, unless it be made to appear *prima facie* that the mine or mines have been drained, benefited or developed by said tunnel.

X SULPHUR MINE AND SULPHUR KING MINE.

A survey of a mining claim made *prior* to date of *location* thereof, cannot be regarded as the official survey contemplated in Section 2325, nor should it receive the approval of the U. S. Surveyor-General.

The only survey recognized as official by the statute is one made *subsequent* to date of location.

Secretary Schurz to Commissioner Williamson, September 6, 1878.

You further stated that "from the foregoing it will be seen that but one survey was made of said claim, and this prior to and for the evident purpose of securing description of the location. There certainly can be no legal objection to a locator taking this precaution to secure an accurate description of the premises he desires to appropriate by location."

The statute requires that the survey and plat above specified shall be made subsequent to the location. This is manifest, I think, from the further provision of the section, that the claimant shall, within the sixty days of publication, file the certificate of the Surveyor-General that five hundred dollars worth of labor has been expended or improvements made upon the claim by himself or grantors. The Surveyor-General should derive the information upon which to base his certificate from his deputy, who makes the actual survey and examination upon the premises.

I am of the opinion that your decision to the effect that a survey made prior to date of location might receive the approval of the Surveyor-General, and thus become the official survey contemplated in Section 2325, upon which a patent might issue, is contrary to the intent of the law, and is erroneous.

While the application for a patent for a claim thus surveyed should not be rejected solely on account of said irregular proceeding, I am of the opinion that, before a patent issues, an actual survey of the claim on the ground should be made subsequent to the recording of the notice of location, as provided by law.

MIDDLE POINT.

Rule for determining the middle point of a vein, from which the lateral measurements are to be calculated.

Commissioner Williamson to Register and Receiver, Helena, Montana, September 28, 1878.

The law, Section 2320 United States Revised Statutes, provides that "no claim shall extend more than three hundred feet on each side of the middle of the vein at the surface."

When the vein outcrops at the surface, there can be no question as to the point from which this lateral measurement must begin. When the discovery shaft develops the vein at some distance below the surface, and the locator does not determine by any further prospecting that the nearest actual surface point is elsewhere, and the fact does not otherwise appear, I am of the opinion that the point of the vein so discovered must be assumed to be the middle of the vein, and the lateral measurements be calculated therefrom.

The law is mandatory, and contemplates that but three hundred feet of surface ground shall be taken on either side of the vein; and a com-

pliance with the law necessitates the fixing of the point from which these measurements shall begin. I think the rule above indicated is the only one practicable. In this case the width of the claim on the northerly side is more than three hundred feet from the discovery opening, and the plat and field-notes have this day been returned to the Surveyor-General for correction in said particular.

TUNNEL LOCATIONS AND TUNNEL LODES.

Commissioner Williamson to David Hunter, Deadwood, Dakota, October 12, 1878.

In reply to your letter of 30th ultimo, asking my construction of the words "which were not previously known to exist," found in Section 2323 Revised Statutes of the United States, and whether the owners of a tunnel are required to stake off and survey each and every lode, etc. I have to advise you that Section 2323 contemplates the running of a tunnel "for the development of a vein or lode, or for the *discovery* of mines;" and the right of possession of all veins or lodes within three thousand feet from the face (or opening) of such tunnel, "*on the line thereof* not previously known to exist, *discovered in such tunnel to the same extent as if discovered from the surface,*" is granted to the owner of such tunnel.

The *line* of such tunnel is held to be the width thereof, and no more, and upon this line only is prospecting for blind lodes prohibited while the tunnel is in progress.

The words "not previously known to exist" refer to undiscovered veins or lodes.

The proprietors of the tunnel are required to give proper notice of their tunnel location at the time they enter cover, by erecting a substantial post, board or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving names of the tunnel proprietors; the actual or proposed course of the tunnel; the height and width thereof; the course and distance from such point of commencement to permanent, well known objects in the vicinity by which to fix its locus; and at the time of posting said notice the owners must establish the boundary lines of the tunnel by stakes or monuments placed along such lines at proper intervals to the terminus of the three thousand feet from the point of commencement within the lines so marked. Prospecting for lodes not previously known to exist, is prohibited while work on the tunnel is being prosecuted with reasonable diligence. When a lode is struck, the surface ground which overlies the apex of the mine must be ascertained, and the claim then duly located as if discovered from the surface. Manifestly the discoverer should ascertain what surface ground covers his lode, and for his own protection stake off his claim; and this is necessary on each lode discovered.

The tunnel is a means of discovery. When the lode is discovered, the tunnel proprietor must proceed in locating his surface ground, staking off the same, posting notice, recording, etc., as if the mine were discovered from the surface.

TOWNSITE *vs.* PLACER.

In cases of contest between the occupants of a town site and the placer mineral claimants to the land so occupied, if the claim is a surface claim, and its location was prior to town-site occupation, no adverse or conflicting right having been acquired by the town or by individual settlers who went there with record notice of the ownership of said placer ground, the application for mineral patent should be allowed, and no exception of any town rights should be inserted in said patent.

Commissioner Williamson to Register and Receiver, Fairplay, Colorado, October 26, 1878.

I have examined the record of testimony submitted at a hearing in your office in the matter of a protest of Thomas Kemp against Thomas Starr's application for a patent to the "Starr Placer" claim. On allegations by Thomas Kemp *et al.*, that the land involved in said application was non-mineral in character, you were authorized to hold a hearing to determine the fact. This hearing was commenced July 30, 1878, and the record was forwarded with your letter of 6th of September last.

In the trial it was sought by Kemp *et al.*, to show that the land was non-mineral, and of more value for a town-site than for mining purposes, the claim of Starr being within the limits of the town of Leadville.

The weight of testimony shows that all the land embraced in this claim was regarded as placer mining ground as early as 1860; that it was prospected with favorable results in different localities; that it has not all been worked because of the limited supply of water and want of proper facilities; that "California Gulch," which is a part of this claim, and lies on the southerly portion thereof, has been worked for a long time, and a large amount of gold taken therefrom; that placer mining is being extended from said Gulch northwardly towards the settled portion of the town; and that, while gold has been found in all parts of this claim, no one has opened a shaft on the northern part of the claim, which has been sunk to bed-rock, and it is manifestly impossible to estimate with any certainty the value of that part of the claim as mineral land; yet, that it is mineral land of more or less value, is clearly established by the record. It also appears that it is not feasible to work the northern portion of the claim until after the lower portion shall have been worked out; it shall be reached by slow approaches in the regular progress of operations, which are gradually being extended from California Gulch towards the north; and hence the fact that it has not been worked cannot have the effect of raising even a presumption of its non-mineral character. It also appears that a portion of this claim was purchased by the St. Louis Smelting and Refining Company, by A. R. Mayer, its agent, and that expensive reduction works have been erected thereon. This enterprise, together with the reputation of the surrounding country for its mineral resources, has, within the last few months, induced a sudden influx of population, whose residence or occupancy will doubtless depend upon the mining prosperity of the locality. The evidence shows that there are probably about 1,200 inhabitants in Leadville.

In order to prevent the land in this claim being "jumped," and its proprietors dispossessed to the extent of such occupancy, lots for building purposes were laid out on the northern part of the survey, and

various persons permitted to build thereon on certain considerations, agreements being executed to convey perfect title on receiving a patent from the United States for the claim.

It seems to have been generally conceded that this mining claim was in all respects legitimate, and that title to no part thereof could be derived from any party except through the proprietors. This was evidently the understanding upon which all sales and agreements were made. Within the last few months certain parties have sought to obtain a foothold on the land embraced in this claim by building thereon without authority. It appears, however, that most of such persons were summarily removed.

Mr. Kemp, protestant, went upon the northern part of this claim, whether by any proper authority does not appear, and erected a house, which, from the evidence, is used for a drinking and gambling saloon and "dance-house." It appears that there was opposition to his building and that he then opposed the claim of Starr. It is in the evidence that Kemp offered to withdraw his protest on condition that the owners of the placer claim would give him title to certain lots thereon. This is not contradicted, and is to a degree an indication of Kemp's faith in the title thus sought to be derived through the mineral claim.

The facts which are clearly established by the proof are, 1st. That the land in question is mineral. 2d. That the mineral claims represented by Starr had their inception long prior to the occupation of any portion of said land as a town-site. 3d. That a large amount of money has been expended thereon in developing the mine, in the construction of reduction works, and in bringing water from a distance to work the claim, and that the development of the mine is proceeding in good faith.

From these facts I conclude that the application of Thomas Starr, when duly perfected, should be allowed, and that no exception of any town rights should be inserted in the patent, for the reason that his claim is a surface claim, and is anterior to town-site occupation, no adverse or conflicting right having been acquired by the town or by individual settlers who went there with record notice of the ownership of said placer ground. It is proper to add that there is no opposition to Starr's application by the town authorities of Leadville.

The affidavit of Thomas Starr, stating in detail all charges and fees paid by him for publication and surveys, together with all fees and moneys paid to the Register and Receiver of the land office, in the matter of his said application for patent, will be required.

SAME ON APPEAL.

Land that is mineral is subject to location only under the provisions of the mining law, without reference to the relative value of a portion of the tract for town-site purposes.

Secretary Schurz to the Commissioner of the General Land Office, March 4, 1879.

I have considered the case of Thomas Kemp *et al. vs.* Thomas Starr, involving mineral application No. 177, Fair Play, Colorado, on appeal from your decision of October 26, 1878, holding that the land in question is mineral in character.

At the hearing held, evidence as to the character of the land was

submitted, and also as to its relative value for mining and town-site purposes. The evidence of the numerous witnesses was, as is usual in such cases, conflicting and contradictory.

After a careful consideration of the same, I concur with you, that the land embraced in the application is land which should, under the provisions of Section 2,318 Revised Statutes, be held as "valuable for minerals," and should be reserved from sale except as provided by law regulating the sale of mineral lands.

In my opinion, the evidence submitted as to the relative value of the land for town-site or mining purposes was improperly allowed. If the land is mineral, it was subject to location only under the provisions of the mining law, without reference to the relative value of a portion of the tract for town-site purposes.

CITIZENSHIP.

Commissioner to Register and Receiver, Shasta, Cal., Nov. 23, 1878.

In case an agent makes affidavit that each member of an *unincorporated* mining company is a citizen of the United States, it must be shown that he is such agent duly authorized by power of attorney, or otherwise, by *each* co-claimant, to act for him.

ERRORS IN FIELD NOTES.

Commissioner Williamson to U. S. Surveyor-General, San Francisco, Cal., Dec. 11, 1878.

In case errors appear in the sworn field notes of a Deputy U. S. Mineral Surveyor, it is not proper for the Register and Receiver or the General Land Office to correct the same. Such correction should be made by the Deputy himself. Under Section 2334 of R. S., only *competent* surveyors should be appointed.

ILLEGAL RELOCATION.

Commissioner Williamson to Register and Receiver, Fair Play, Col., Dec. 13, 1878.

On the 12th October, 1871, certain parties located 3,000 linear feet of the Peerless lode; by a continuous line of conveyances the Colorado Mineral Land, Mining and Smelting Company became the owners, and on January 28, 1875, *relocated* 1,500 linear feet of said lode. On the 28th December, 1875, said company conveyed the premises to the applicant, who on March 10, 1876, relocated again 3,000 feet of said lode.

Held that the relocation of 3,000 feet was illegal, for the reason that the company making the conveyance having abandoned the original location of 3,000 feet under act of July 26, 1866, and having made a new location of 1,500 feet, proceeded under the act of May 10, 1872, and their grantee could not make a location of a greater amount than was conveyed to him.

When 1,500 feet of a location of 3,000 feet, under act of 1866, are excluded from the claim by a relocation of 1,500 feet with new rights under act of 1872, the original location cannot be resumed by a second relocation of the whole.

NOTICE OF COMMENCEMENT OF SUIT.

The failure of an adverse claimant to give to the Register and Receiver notice of the commencement of suit in court, while it may cause inconvenience to the delinquent, cannot work a forfeiture of his right. It is the duty of the defendant to prove that suit has *not* been commenced before making entry.

Commissioner Williamson to Register and Receiver, Marysville, California, December, 19, 1878.

It seems that you allowed the entry of Hewitt, January 12th, 1878, because "no notice or other evidence showing that suit had been commenced in court by the adverse claimants had been filed in this (your) office."

Your action was erroneous, and in violation of law. Section 2326 U. S. Revised Statutes, provides that upon filing of adverse claim, and commencement of suit in the proper time, all proceedings shall be stayed, except the publication of notice and making and filing the affidavit thereof.

Your action is based on failure of notice to you that suit had been commenced, while entry should have been allowed only on proof that suit had *not* been commenced.

It was the plaintiff's duty and interest to advise you by official proof that he had commenced suit, but it was the defendant's duty to prove that no suit had been commenced before making entry.

The commencement of suit is a compliance with the law which is mandatory as to subsequent proceedings in your office. The requirement that plaintiff shall notify you of commencement of suit is an office regulation, failure to observe which, while it may result in inconvenience to a delinquent, cannot work a forfeiture of right, or justify this office in ignoring the law.

In this case it appears that four days prior to making the entry the defendant appeared in court, and filed his demurrer, thus indicating that he designedly availed himself of an entry which the law at that time forbade.

The entry is hereby held for cancellation, to await the adjudication of said court, or other legal adjustment of the controversy.

LODE AND PLACER NOT CONTIGUOUS.

Commissioner Williamson to Henry O' Conner, jr., Deadwood, Dakota, January 10, 1879.

In reply to your letter asking "whether or not a patent will issue including a placer and ledge claim when said claims are not contiguous and the ledge is entirely without the placer location," you are informed that a placer and lode claim situated as aforesaid cannot be embraced in the same patent or the same proceeding for patent.

PLACER WITHIN INDIAN RESERVATION.

Commissioner Williamson to A. B. Knight, Virginia City, Montana, January 20, 1879.

A placer claim which has been mined several years, lying just within the boundary of the Crow Indian Reservation, cannot be surveyed and patented. The parties so engaged in mining upon the reservation proceed in violation of law.

OVERLAPPING AND TRIANGULAR SURVEYS.

Fred. C. Morse, Esq., Fair Play, Colorado, January 21, 1879.

I am in receipt of your letters of November 28th and December 8th, 1878, asking, in substance, whether it will be in accordance with the instructions of this office, requiring the end lines of lode claims to be in all cases parallel to each other, to make a survey whereof one of the ends overlaps a previously approved survey; and you send a diagram, illustrating your question, which shows the end of one survey overlapping the end of another patented survey. You state that the portion covered by both surveys was excluded by a clause in the field-notes.

You are informed that the proceeding detailed as above was erroneous. The end lines of the second survey were not parallel when patented. The law gives the owner of a lode a right thereto for a certain length, and should his lode dip under the adjoining side lines of his claim, he may, without entering upon the surface, prosecute the dip under such adjoining land, but is restricted in so doing to the one lying within the extension of the parallel end lines. Now by an examination of the diagram made by you, it will be at once perceived that to keep within the extension of the end lines would, on entering adjoining land, gradually shorten the length of his lode on one side, and lengthen his lode on the other, and probably, at least possibly, conflict with rights of other parties assured to them by patent, or under the law.

You also submit a diagram in the form of a triangle, and ask whether such surveys will be approved by this office. On this point I would say that in no case can a triangle, *which embraces the entire lode or vein claimed*, be approved unless the lode itself extends into and fills the point in the acute angle, and then only when adverse rights, existing on the 10th day of May, 1872, render it necessary. See section 2320, U. S. Revised Statutes, which precludes a restriction of the width to less than twenty-five feet on each side of the middle of the vein at the surface.

Neither can the surface ground extend beyond the end of the lode in any instance.

Where a lode intersects another claim and extends within a prior survey or location, it may be patented to the length allowed by law, and if the end of the lode is found within such prior location, the surface ground may close upon the prior survey, *provided* the extension of the end line within such prior survey, *parallel to the other end line*, would not exclude any portion of such surface ground.

Where a survey of the kind last above mentioned results in a triangle formed against the prior survey, the shape of the same, subject to the restrictions, as to the surface ground extending beyond the lode before named, will not be objectionable, but this will not apply where the lode embraced by the subsequent survey is merely the extension or continuation of the same lode on which prior location is made, for in such case the lode itself cannot extend within the prior location.

AMERICAN HILL QUARTZ MINE.

A party in possession is not compelled to purchase mining land from the Government, and if he complies with the laws of possessory right, his title is as good for all practical purposes as if secured by patent.

When the purchase is completed, and the certificate issued, the purchaser at once

acquires a vested right, of which he cannot be subsequently deprived, and the land ceases to be a part of the public domain. There is a part performance of the contract, which entitles the purchaser to the specific performance of the whole, without further action on his part. An entry made is equivalent to a patent issued.

Secretary Schurz to Commissioner of the General Land Office, March 4, 1879.

I have considered the case of Clarence Smith and F. W. Clute *vs.* Peter Vanclief, Charles Heintzen, and John C. Young, involving the right to lots 37, 38 and 39, town. 19 N., range 11 E., M. D. M., Sierra Mining District, Sacramento Land District, California.

The facts relative to this case are as follows: On June 1, 1877, Vanclief, Heintzen and Young made application for patent for the "American Hill Quartz Mine," situated in town. 19 N., range 11 E., M. D. M. (in the certificate and receipt erroneously described as range 9 E.), and described by the official survey thereof, made by Deputy Surveyor Charles W. Hendel, in November, 1876, as lots 37, 38, and 39, containing 2,288.22 feet in length by 250 feet in width on each side of the lode. No adverse claim was filed during the period of publication, and an entry was allowed and patent certificate issued in the name of said parties on January 16, 1878. After said entry was made, viz., on April 28, 1878, Clarence Smith claims to have re-located lots 38 and 39, and F. W. Clute claims to have relocated lot 37, pursuant to the provisions of section 2324 of the Revised Statutes of the United States, and it is alleged on behalf of said relocators that no labor was performed or improvements made on said claim by Vanclief *et al.*, on January 1, 1875, nor at any time subsequent thereto until April 28, 1878, when said relocators entered thereon and ascertained that a lode, ledge, or vein of gold-bearing quartz existed therein, whereupon they relocated and claimed the same, and gave notice of their said relocation and claim in the manner required by law. Said relocators, therefore, ask to have the application for patent of Vanclief *et al.* dismissed, and for such other and further relief as the circumstances of the case demand.

By your decision of September 26, 1878, the relocations of Smith and Clute were adjudged to be illegal and void, and their applications for recognition were dismissed. In this decision you confined the scope of your inquiry to the consideration of the legal rights of Smith and Clute, as relocators, and did not pass upon the merits or regularity of the entry of Vanclief *et al.*, but left all questions relating to the regularity of said entry for examination and adjustment when the entry was reached and examined on its merits in its regular order. In this there was no error.

Messrs. Smith and Clute have attempted to relocate a mining claim which has been entered and paid for, with full knowledge of the existence of the entry; and the theory of their case is, that they have a legal right to relocate a claim at any time prior to the issuance of patent or failure of the parties making the entry to perform the necessary labor, and make the necessary improvements thereon.

If the theory of the relocators is correct on this point, they have a standing as parties in interest for the purposes of this case, and it is not material whether the entry of Vanclief *et al.* was regular or irregular; but in so far as they seek to attack the regularity of the entry, and to

contest matters arising prior to the time it was made, their *status* is that of protestants only, and they could have no right of appeal from your decision in any event.

As it would be bad practice for this Department to take original jurisdiction over matters not involved in your decision, and not subject to appeal if they were involved, the questions relating to the regularity of the entry made by Vanclief *et al.* will not be considered.

That part of the statute under which the relocators claim which is material to the consideration of this case is in the following words, viz: [See Part I., Section 2324.]

By act approved June 6, 1874, 18 Stat., 61, the time within which the first annual expenditure required to be made on claims located *prior* to May 10, 1872, was extended to January 1, 1875.

This case, therefore, presents the naked question of law, whether or not after a mining claim has been entered and paid for, it is subject to relocation by strangers between the date of entry and the date on which a patent is issued, in the event that the persons making the entry fail to perform the labor or make the improvements required by section 2324 of the Revised Statutes of the United States. It has already been stated that this inquiry would be confined to events occurring subsequently to the date of the entry of Vanclief *et al.*

The proof presented by Messrs. Smith and Clute, shows that no work was performed or improvements made by Vanclief *et al.*, between January 16, 1878, the date of the entry, and April 28, 1878, the date of the alleged relocation.

Admitting for the purpose of the argument, that a mine can be relocated after entry, it is manifest that such relocation can only be made after forfeiture; and as no forfeiture can take place until one year after entry, it is clear that the proofs presented in this case are insufficient, and the relocations premature. On their own construction of the law, Messrs. Smith and Clute could have acquired no right to relocate prior to January 17, 1879, and then only in the event that Vanclief *et al.* should fail to improve it during the year subsequent to entry.

The consideration of this case might well be closed at this point, but as I think the interests of the government and those of mining claimants demand that the legal question should be disposed of, in so far as lies within the power of this Department to do so, I deem it proper to proceed with the consideration of the question.

At the outset it is proper to remark that by the mining laws of the United States three distinct classes of titles are created, viz.:

1. Title in fee simple.
2. Title by possession.
3. The complete equitable title.

The first vests in the grantee of the government an indefeasible title, while the second vests a title in the nature of an easement only. The first being an absolute grant by purchase and patent without condition, is not defeasible, while the second being a mere right of possession and enjoyment of profits without purchase, and upon condition, may be defeated at any time, by the failure of the party in possession to comply with the condition, viz.: To perform the labor or make the annual improvement required by the statute. The equitable title accrues immediately upon purchase, for the entry entitles the purchaser to a pat-

ent, and the right to a patent once vested is equivalent to a patent issued. Stark *vs.* Starrs, 6 Wall. 418.

Section 2324, Revised Statutes, has reference solely to title by right of possession, and does not in any way conflict with titles acquired by purchase; for, in the latter case, both must be in one and the same person. A title by right of possession is the lowest grade of title known to the mining laws; the next is the equitable title which accrues upon purchase and entry, while the third and final grade is the fee simple, which is acquired by patent, evidencing the legal title and merging therein both the possessory and equitable titles.

Where lands are acquired under the pre-emption laws, it sometimes occurs that the legal title may be in one person, and a superior equity in another; but this cannot occur under the operation of the mining laws, for all legal and equitable adverse titles and claims must be presented to and passed upon by the courts, prior to the issuance of patent, or be considered as stale and abandoned.

The question was expressly decided by Mr. Justice Field in the case of the Eureka Mining Company *vs.* Richmond Mining Company. 4 Sawyer, C. C. Reports, 318.

The possessory right provided for by section 2324, Revised Statutes, may continue for an indefinite term of years, and can only be terminated by a failure of the claimant to comply with the terms of the statute, and an assertion of claim to the land by another; but there is nothing in the law which requires a party in possession to purchase the land from the government, and if he complies with the law relating to possessory rights, his title, for all practical purposes, is as good as though it were secured by patent.

Section 2324 provides, in terms, that a possessory claim may be relocated at any time prior to the issuance of patent, if the necessary labor or improvement shall be neglected for one year; but, "a person ought not to think, if he have the letter on his side, that he hath the law on all cases." (Plowden.) "No statute shall be interpreted so as to be inconvenient or against reason." Cawdree's case, 5 Rep.

"The words of a statute ought not to be expounded to destroy natural justice." Story, p. 81.

The purpose of the requirement of the law was to obviate an abuse which had assumed formidable proportions in the mining regions. In the early history of mining operations in this country, it was the universal practice of miners to assemble together and make laws for the government of the mining district where they resided. These laws were generally very liberal in the matter of possessory rights and titles, and great areas of land were covered by duly recorded mining claims, upon which no work had been done or improvements made for a long series of years.

Under the rulings of the local courts, these claims operated as a cloud upon the title to the land, and retarded the progress and development of the mining industries of the country. In order, therefore, to put an end to this abuse, and encourage the purchase of the lands from the government, and the consequent establishment of permanent industries, Congress wisely provided that possessory rights should exist only as long as the specified amount of work was annually performed.

The object of the law being to encourage the purchase of mineral

lands, it would be manifestly improper for this Department to so construe the law as to destroy the purpose which Congress had in view in enacting it.

The mining laws require certain acts, in the nature of conditions precedent, to be performed before an entry is made, and the validity of the entry is made to depend upon the facts existing at the time it is made, and not upon anything which the claimant may do, or omit to do, afterwards.

These precedent requirements are specifically set out in section 2325, Revised Statutes, and it is made your duty, in the regular order of business, to see that they have been complied with, and thereupon, to issue a patent for the mine in accordance with the calls of the location and entry; yet it seldom occurs, owing to the great number of mining entries allowed, and the gravity of the questions involved, that an entry can be examined and patented until months, and sometimes years, after it is made.

Such a construction would, in my opinion, be repugnant to the intent of the statute.

The true rule of law governing entries of the public lands, to which mineral lands form no exception, is that when the contract of purchase is completed by the payment of the purchase money and the issuance of the patent certificate by the authorized agents of the government, the purchaser at once acquires a vested interest in the land, of which he cannot be subsequently deprived, if he has complied with the requirements of the law prior to entry; and the land thereupon ceases to be a part of the public domain, and is no longer subject to the operation of the laws governing the disposition of the public lands. In such cases there is a part performance of a contract of sale which entitles the purchaser to a specific performance of the whole contract without further action on his part. When the proofs are made, and the purchase money paid, the equitable title of the purchaser is complete, and the patent when issued is evidence of the regularity of the previous acts, and relates to the date of entry, to the exclusion of all intervening claims.

In short, an entry made, is in all respects equivalent to a patent issued, in so far as third parties are concerned.

In support of these views I cite the following adjudicated cases: Carrol *vs.* Safford, 3 Howard 441; Landes *vs.* Brant, 10 Howard 348; Lessees of French *et al. vs.* Spencer *et al.*, 21 Howard 240; Witherspoon *vs.* Duncan, 4 Wallace 210; Stark *vs.* Starrs, 6 Wallace 418; Whitney *vs.* Frisbie, 9 Wallace 187; Irvine *vs.* Irvine, 9 Wallace 617; Barney *vs.* Dolph, Oct. Term, 1878, U. S. Sup. Court; Cruise on Real Property, vol. 5, pp. 510, 511.

As the doctrine is firmly established that where several concurrent acts are necessary to make conveyance, the original act shall be preferred, and all subsequent acts shall have relation to it, it is held that an entry made is equivalent to a patent issued, within the meaning and intent of section 2324 of the Revised Statutes. The attempted relocation of the tract in question by Messrs. Smith and Clute, was void at its inception, and was properly rejected.

Your decision is affirmed for the reasons stated.

RECEIVER—EXPENDITURE.

Entry of a mine in the interest of the Receiver of a district land office is improper.
In estimating the $500 expenditures, essential to authorize entry, improvements made by former locators who had abandoned their claim cannot be included.

Secretary Schurz to the Commissioner of the General Land Office, June 23, 1879.

On April 24, 1876, Andrew M. Embry made application for patent for 1,500 linear feet on the Del Norte lode, Central City land district, Colorado, and made entry of the same on August 22, 1876, per mineral entry No. 782.

On March 27, 1878, William H. Morgan filed affidavits in your office alleging that neither the applicant for patent nor his grantors had made the expenditures on said lode required by law to entitle him to a patent, and that the expenditures made by said applicant and his grantors did not exceed in value the sum of twenty dollars.

On April 9, 1878, you ordered a hearing to determine the value of the improvements made on said lode, by whom and when made, and the testimony was taken before the clerk of the district court of Gilpin county, Colorado, in June, 1878.

On December 20, 1878, you decided that neither the applicant nor his grantors had made the necessary expenditures on the mine to entitle him to a patent, and you accordingly held his entry for cancellation; and he has appealed from your decision.

The proofs in this case show that the application for patent is based on a location made on January 1, 1876, by Edward W. Henderson (Receiver of the land office) and Robert B. Smock.

The abstract of title shows that on February 29, 1876, Smock conveyed his interest in the mine to Henderson, and Henderson deeded the mine to Andrew Embry on April 1, 1876.

Smock testified at the trial that he transferred his interest in the mine to Henderson for the purpose of facilitating the procurement of a patent; and Henderson testified that as he was Receiver of the land office, he doubted the propriety of making the entry in his own name, and therefore conveyed to Embry, and that Embry was really acting as trustee for himself and Smock, and that they were the actual owners of the mine.

The testimony shows, and it is admitted by Henderson, that no improvements were made on the mine between the date of location and the date of entry.

On January 2, 1878, Embry, with the knowledge and consent of Henderson and Smock, leased the mine to Daniel R. Miller, who appears to have subsequently done about twenty dollars' worth of work on it.

Smock was a witness for Embry when he made his final proof and entry, and testified that the improvements made by Embry and his grantors on the Del Norte were worth not less than five hundred dollars, and that he (Smock) owned no interest whatever in said property —statements which were wholly untrue. The testimony in this case shows clearly—

First. That the conveyances from Smock to Henderson, and from Henderson to Embry, were fraudulent.

Second. That in the entry of this mine by the Receiver of the local land office, through his agent Embry, that officer was guilty of a direct violation of the order of this department of August 3, 1876, and the instructions of your office of August 23, 1876.

Third. That the affidavit of Smock, dated April 24, 1876, wherein he stated that five hundred dollars' worth of improvements had been made on the Del Norte lode by Embry and his grantors, and that he owned no interest in the property, was false, and the entry was therefore based upon fraudulent proof in so far as relates to the value of the improvements made on the lode.

Fourth. That the statement of the deputy surveyor contained in the field notes of survey, that five hundred dollars' worth of improvements had been made on the Del Norte lode by the claimant and his grantors, was untrue, although not intentionally so, as the deputy inadvertently included in his field-notes the improvements which had been made by other parties, under locations which had been abandoned.

Fifth. That neither the applicant nor his grantors had done any work or made any improvements on the Del Norte lode between the date of location and the date of entry thereof, and that the entry is therefore illegal.

On the trial of this case, testimony was introduced to the effect that more than five hundred dollars' worth of work had been done on this lode some years ago, when it was claimed by various parties under former locations, and was known as the Jones lode and Doubloon lode, which said locations had been abandoned long prior to the time the Del Norte location was made.

It was also shown that Smock had some years ago purchased an interest in the abandoned Jones lode, and it is sought to make the work done on the abandoned Jones location available as improvements made on the Del Norte lode in the disposition of this case.

With reference to this question, it is only necessary to say that the Jones lode having been abandoned, and the claim relocated under section 2324 of the Revised Statutes, all rights which had been acquired by the location and improvements of the Jones lode were lost by the abandonment of that lode, and no person, no matter what his relations may have been to the old location, can now claim any benefits arising from improvements made on it prior to abandonment. The claim of the applicants is based upon the location of January 1, 1876, and as it is clearly shown that the law had not been complied with, and that the entry was allowed on false and fraudulent proofs, there is no error in your decision holding it for cancellation.

IOWA *vs.* BONANZA.

A failure on the part of an adverse claimant to prosecute his suit to judgment with reasonable diligence, shall be a waiver of his claim.

The question of diligence in the prosecuting of a pending suit is as much a question for the determination of the court as any other question of law or fact which may arise in the progress of the case, and one which, after the court has acquired jurisdiction, should be left for its determination.

Secretary Schurz to Commissioner Williamson, June 25, 1879.

I have considered the case of the Iowa Mining Company *vs.* The Bonanza Mining Company, involving certain mineral lands in the Vir-

ginia mining district, Carson City land district, Nevada, on appeal from your decision of October 11, 1878, adverse to the Iowa company.

The facts of this case, as they are made to appear by the record, are as follows: On January 11, 1876, the Bonanza Mining Company made application for patent for 593 linear feet on the Lucky Baldwin lode, together with 200 feet in width of surface ground, situated in the Virginia mining district, Storey county, Nevada, and gave due notice thereof by publication, and by posting a copy of the notice and plat on the claim in the manner prescribed by law.

On March 11, 1876, two adverse claims were filed against said application for patent, one by W. B. Murdock, and the other by the Iowa Mining Company. Suit was commenced by Murdock in the District Court for the First Judicial District of Nevada, on March 11, 1876, but this action was voluntarily dismissed by the plaintiff on November 13, 1876, as shown by the certificate of the clerk of said court.

On April 7, 1876, the Iowa Mining Company commenced suit on its adverse claim in the same court, by filing a complaint and causing a summons to be issued; and it is shown by a certificate of the clerk of said court, dated May 24, 1878, that service had not been perfected on the defendant, and no further steps taken by the plaintiff in the prosecution of said suit.

On this state of facts you decided that the Iowa Company had waived its adverse claim by a failure to prosecute said suit with reasonable diligence, and that the Bonanza Company was entitled to a patent for the land, on fully complying with the requirements of the mining law.

In this I think you erred. Section 2326 of the Revised Statutes provides as follows: "Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries and extent of such adverse claim; and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment, and a failure so to do shall be a waiver of his adverse claim." Said section also provides for the filing of a certified copy of the judgment-roll, an entry of the land, and the issuance of patents in conformity with the decree of the court.

This statute provides in plain terms that a failure on the part of an adverse claimant to prosecute his suit to judgment with reasonable diligence, shall be a waiver of his claim; but it does not provide, either in terms or by necessary implication, that you shall decide what constitutes reasonable diligence, while suit is pending in court.

There can be no question but that the State court of Nevada has acquired jurisdiction over this cause, and it is equally clear that the object of the law was to require parties claiming an adverse interest in land included in an application for patent to try the right of possession, and have the controversy determined by the State courts before a patent was issued.

"Where a court has jurisdiction, it has a right to decide every

question which occurs in the cause." Elliott *vs.* Peirsol, 1 Peters, p. 340.

The question of diligence in the prosecution of a pending suit, is as much a question for the determination of the court, as any other question of law or fact which may arise in the progress of the case, and one which, after the court has acquired jurisdiction, should be left for its determination. I do not think it was the intention of Congress that you should decide what constitutes reasonable diligence in the prosecution of a suit pending in a court of competent jurisdiction, for such a proceeding would necessarily interfere with matters which the court alone should determine.

Under such a practice it might occur that you would hold that reasonable diligence had not been exercised, and issue a patent; while the court might hold otherwise, and give judgment for the adverse claimant; and the result would be a conflict of authority and a confusion of titles, which would compel the successful parties to resort to further expensive litigation by bill in equity to procure title to the land which had been adjudged to belong to them by the courts.

I am of opinion that the proper practice in cases of this character is for the defendant, if in his opinion the suit is not prosecuted with reasonable diligence, to move the court to dismiss the case for want of prosecution, and if the motion is granted, cause the judgment to be certified to your office, when a patent can be issued without conflict with the jurisdiction of the courts, or the rights of the parties in interest.

Your decision is reversed for the reasons stated, without prejudice to the rights of either party; and further proceedings will be stayed to await the result of said suit.

ADVERSE CLAIM FILED ON SUNDAY.

In the absence of a law to the contrary, an adverse claim may be filed on Sunday or out of office hours, if the local officers are willing to receive it; though they are not required to receive adverse claims or transact other business except during regular office hours.

Secretary Schurz to Commissioner Williamson, July 17, 1879.

I have considered the appeal of George A. Sayer and Samuel Goldstone from your decision of March 30, 1878, rejecting the adverse claim of the appellants, to the application of the Hoosac Consolidated Gold and Silver Mining Company for a patent for 1,500 linear feet of the "Dolly Varden Mine," Secret Cañon mining district, Eureka, Nevada, for the reason that said adverse claim was not filed within the time required by law.

You held that "officers are not expected nor required to transact official business after office hours, nor to have their offices open for the transaction of business on Sunday. And as this adverse claim can only be considered as filed on Monday, the 17th of September, 1877, it must be rejected."

From the statement of facts presented in this case, it appears that the 60th day of publication of notice of the application fell on Sunday, September 16, 1877; that about 10 p. m. of the previous day, Mr. Sayer presented his adverse claim and tendered fees for the filing of the same to the Register of the Land Office, who refused to receive

said adverse claim or the fees for filing the same; that on the following day Mr. Sayer presented the adverse claim to the Receiver of said Land Office, who accepted it, filed it, and received the fees for the same.

While it is true that officers are not expected nor required to transact business out of office hours or on Sunday, still there is no law of the United States prohibiting them from doing such business. Nor am I able to find any law of the State of Nevada which prohibits the transaction of ordinary business on the Sabbath day.

Both of said officers might properly have refused to receive such application either out of office hours or on the Sabbath day, but the Receiver did receive the adverse claim and filed the same, and by so doing, if suit was commenced within the time prescribed by law, I am of the opinion that the rights of the appellants were protected. Your decision is therefore reversed.

ADELAIDE *vs.* CAMP BIRD.

Where mining locations cross each other, and there is reason to believe that a contest may arise in future, the rights of neither party should be prejudiced prior to a judicial determination thereof, by unnecessary *habendum* or *reddendum* clauses in the patent.

In this case, notwithstanding the applicants for patent have not entered and do not seek a patent for the surface-ground embraced in the opposing company's claim at the intersection of the two claims, yet as their vein may extend into the other party's land and not intersect the other party's vein, an excepting clause will be inserted in the patent as broad as the granting clause therein. Such excepting clause is given in full.

Secretary Schurz to Commissioner Williamson, July 21, 1879.

I have considered the application of Patrick Gallagher and Charles Gallagher for patent for the Camp Bird mining claim, Entry No. 130 of Survey No. 237, in the California mining district, Fairplay land district, Colorado.

The facts of this case are as follows, viz.: A survey of said mining claim was completed by Deputy Surveyor W. H. Bradt, on June 9, 1877, and approved by the Surveyor-General of Colorado, on July 21, 1877. By said survey the Camp Bird claim is represented as a parallelogram 1,500 feet in length by 300 feet in width, and the amount of land contained within the boundaries thereof is represented as $10\frac{277}{1000}$ acres. The survey of this lode crosses the "Adelaide Lode" at nearly right angles, and the amount of surface ground contained within the Adelaide claim at the point of intersection, is $2\frac{972}{1000}$ acres. The preliminary proceedings for patent appear to have been in strict conformity with the requirements of the mining law, and no adverse claim was filed or suit commenced during the period of publication.

On November 19, 1877, said applicants made entry of $7\frac{305}{1000}$ acres of surface ground of said mining claim, being the exact amount of land contained within the survey thereof, after deducting the surface ground contained in the Adelaide claim at the point of intersection, viz.: $2\frac{972}{1000}$ acres.

In the published notice of said application for patent, the amount of land applied for is stated as being $7\frac{305}{1000}$ acres.

On August 12, 1878, counsel for the Adelaide Consolidated Silver Mining and Smelting Company filed in your office the protest of H. D. Cooke, President, and John R. Magruder, Superintendent of the

Adelaide company, in which it was alleged that the description of the Camp Bird claim, as shown by the official survey, was not sufficiently specific for the protection of the interests of the Adelaide Company, and that it was quite possible that the Camp Bird Company intended to take the land at the point of intersection of the two claims.

Said protestants also stated that important testimony had been prepared impeaching the regularity and good faith of the Camp Bird application, and asked that a clause be inserted in the patent issued on the Camp Bird claim, excepting and excluding the area in conflict with the Adelaide claim.

On October 18, 1878, counsel for the applicant for patent addressed a letter to your office in which they stated: "Our survey, application, and entry all excluded the surface ground in conflict with the Adelaide, and that such surface conflict may, in the usual terms, be excepted from our patent. No unusual clauses of reservation are therefore necessary, nor will they be accepted by us; and the right to ore at point of intersecting lodes, must necessarily, under the statutes, be left to judicial determination in event of future dispute upon point of priority."

On November 21, 1878, counsel for the Adelaide Company submitted certain affidavits wherein it was alleged that during the period of publication the owners of the Adelaide claim were assured by the owners of the Camp Bird claim, and by their attorney, that the Camp Bird claim was not intended to interfere with the Adelaide claim, or appropriate any part of the same, and that the priority of location of the Adelaide claim was admitted. On this state of facts you decided to approve the Camp Bird application, and to issue a patent thereon containing the following clause, viz:

"That the grant hereby made is restricted to the land hereinbefore described, which lies outside of the area of the intersection of the Camp Bird survey with the surface ground of the Adelaide lode, there being excepted and excluded from this conveyance all surface ground contained in the Adelaide location, as shown by the foregoing description, together with all veins, lodes and ledges lying and being therein, to which the said Adelaide mining claim is entitled by reason of its said location."

You also decided that the Adelaide owners had been admitted to the record as parties in interest, and were entitled to the right of appeal from your decision. Both parties have appealed from your decision, and have filed elaborate arguments in support of their objections.

Section 2322, of the Revised Statutes, defines the possessory rights of location of mining claims to be as follows, viz: The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the 10th day of May, 1872, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States, governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes or ledges may so far depart from a perpen-

dicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim, to enter upon the surface of a claim owned or possessed by another.

The language of this section is clear and specific in defining the rights of possession which the locators of a mining claim are entitled to enjoy, and I find nothing in the law which can be construed as limiting the right of a patentee to the enjoyment of less rights and privileges than he could lawfully claim prior to the issuance of a patent.

The only law relating to cross lodes is found in Section 2336 of the Revised Statutes, and is in these words: Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Under this statute the rights of the parties are made to depend upon the fact of actual intersection of the veins, and priority of location; matters which it is the peculiar province of the judicial tribunals to determine; yet in cases where mining locations cross each other, and there is reason to believe that a contest may arise in future, the rights of neither of the parties in interest should be prejudiced prior to a judicial determination thereof, by the insertion of unnecessary *habendum* or *reddendum* clauses in the patent.

In this case the Camp Bird Company has not entered, and is not asking for a patent for the surface ground embraced in the Adelaide claim, at the point of intersection of the two claims; yet its vein may extend through the ground belonging to the Adelaide and still not intersect with the Adelaide vein. In that event, the right of the Camp Bird owners to pursue said vein through the ground of the Adelaide at the point of intersection of the two claims is vested by law, and ought not be limited by the patent; while on the other hand, the right of the owners of the Adelaide to pursue their vein is equally well protected by the statute, and should not be prejudiced by the grant to the Camp Bird Company. Under the circumstances of the case, the only way by which the interests of both parties can be fully protected, is by making the excepting clause in favor of the Adelaide Company as broad as the granting clause to the Camp Bird Company; for, by so doing, both will receive all that the law gives them, and neither will have any legal advantage.

It is a familiar principle of law that a reservation in a *reddendum* clause in a deed by a grantor, to be valid, must be made to one of the grantors and not to a stranger to the deed [2 Bl. Com. 299; Co. Litt. 47; Touchs 80; Cruise Dig. tit., 32 c., 24 s. l.], and I am, therefore,

Adelaide company, in which it was alleged that the description of the Camp Bird claim, as shown by the official survey, was not sufficiently specific for the protection of the interests of the Adelaide Company, and that it was quite possible that the Camp Bird Company intended to take the land at the point of intersection of the two claims.

Said protestants also stated that important testimony had been prepared impeaching the regularity and good faith of the Camp Bird application, and asked that a clause be inserted in the patent issued on the Camp Bird claim, excepting and excluding the area in conflict with the Adelaide claim.

On October 18, 1878, counsel for the applicant for patent addressed a letter to your office in which they stated: "Our survey, application, and entry all excluded the surface ground in conflict with the Adelaide, and that such surface conflict may, in the usual terms, be excepted from our patent. No unusual clauses of reservation are therefore necessary, nor will they be accepted by us; and the right to ore at point of intersecting lodes, must necessarily, under the statutes, be left to judicial determination in event of future dispute upon point of priority."

On November 21, 1878, counsel for the Adelaide Company submitted certain affidavits wherein it was alleged that during the period of publication the owners of the Adelaide claim were assured by the owners of the Camp Bird claim, and by their attorney, that the Camp Bird claim was not intended to interfere with the Adelaide claim, or appropriate any part of the same, and that the priority of location of the Adelaide claim was admitted. On this state of facts you decided to approve the Camp Bird application, and to issue a patent thereon containing the following clause, viz:

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You also decided that the Adelaide owners had been admitted to the record as parties in interest, and were entitled to the right of appeal from your decision. Both parties have appealed from your decision, and have filed elaborate arguments in support of their objections.

Section 2322, of the Revised Statutes, defines the possessory rights of location of mining claims to be as follows, viz: The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the 10th day of May, 1872, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States, governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes or ledges may so far depart from a perpen-

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The language of this section is clear and specific in defining the rights of possession which the locators of a mining claim are entitled to enjoy, and I find nothing in the law which can be construed as limiting the right of a patentee to the enjoyment of less rights and privileges than he could lawfully claim prior to the issuance of a patent.

The only law relating to cross lodes is found in Section 2336 of the Revised Statutes, and is in these words: Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Under this statute the rights of the parties are made to depend upon the fact of actual intersection of the veins, and priority of location; matters which it is the peculiar province of the judicial tribunals to determine; yet in cases where mining locations cross each other, and there is reason to believe that a contest may arise in future, the rights of neither of the parties in interest should be prejudiced prior to a judicial determination thereof, by the insertion of unnecessary *habendum* or *reddendum* clauses in the patent.

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The language of this section is clear and specific in defining the rights of possession which the locators of a mining claim are entitled to enjoy, and I find nothing in the law which can be construed as limiting the right of a patentee to the enjoyment of less rights and privileges than he could lawfully claim prior to the issuance of a patent.

The only law relating to cross lodes is found in Section 2336 of the Revised Statutes, and is in these words: Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Under this statute the rights of the parties are made to depend upon the fact of actual intersection of the veins, and priority of location; matters which it is the peculiar province of the judicial tribunals to determine; yet in cases where mining locations cross each other, and there is reason to believe that a contest may arise in future, the rights of neither of the parties in interest should be prejudiced prior to a judicial determination thereof, by the insertion of unnecessary *habendum* or *reddendum* clauses in the patent.

In this case the Camp Bird Company has not entered, and is not asking for a patent for the surface ground embraced in the Adelaide claim, at the point of intersection of the two claims; yet its vein may extend through the ground belonging to the Adelaide and still not intersect with the Adelaide vein. In that event, the right of the Camp Bird owners to pursue said vein through the ground of the Adelaide at the point of intersection of the two claims is vested by law, and ought not be limited by the patent; while on the other hand, the right of the owners of the Adelaide to pursue their vein is equally well protected by the statute, and should not be prejudiced by the grant to the Camp Bird Company. Under the circumstances of the case, the only way by which the interests of both parties can be fully protected, is by making the excepting clause in favor of the Adelaide Company as broad as the granting clause to the Camp Bird Company; for, by so doing, both will receive all that the law gives them, and neither will have any legal advantage.

It is a familiar principle of law that a reservation in a *reddendum* clause in a deed by a grantor, to be valid, must be made to one of the grantors and not to a stranger to the deed [2 Bl. Com. 299; Co. Litt. 47; Touchs 80; Cruise Dig. tit., 32 c., 24 s. l.], and I am, therefore,

of opinion that the exception should be contained in the *habendum* clause.

The following form will, in my opinion, fully protect the interests of both parties, viz.: "Have given and granted and by these presents do give and grant, unto the said Patrick Gallagher and Charles Gallagher, and to their heirs and assigns, the said mining premises hereinbefore described as —— with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of —— linear feet of the said Camp Bird vein, lode, ledge or deposit, for the length hereinbefore described, throughout its entire depth, although it may enter the land adjoining, and also of all other veins, lodes, ledges or deposits through their entire depth, the tops or apexes of which lie inside of the exterior lines of said survey at the surface, extended downward vertically, although such veins, lodes, ledges or deposits in their downward course may so far depart from a perpendicular as to extend outside the side lines of said survey: *Providea*, That the right of possession hereby granted to such outside parts of said veins, lodes, ledges or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges or deposits; excepting and excluding, however, all that portion of said surface ground embraced by mineral survey No. 254 of the Adelaide mining claim, and also excepting and excluding all veins, lodes, ledges or deposits, the top or apex of which lie inside of the exterior lines of said Adelaide survey at the surface, extended downward vertically, or which have been therein discovered or developed: *Provided*, That nothing contained in this grant is intended to interfere with the legal rights of said claimants in case said veins are found on exploration to intersect with each other."

Inasmuch as the owners of the Adelaide lode failed to file an adverse claim and commence suit within the period prescribed by law, I am of opinion that your ruling that they were entitled to the right of appeal, as parties in interest, was erroneous.

Your decision is modified in accordance with the views above expressed.

Under date of July 25, 1879, the Secretary issued the following additional instructions in this case:

"You are hereby instructed to insert in the form prescribed in said decision the words 'fifteen hundred,' so as to make the clause read as follows: * * * 'with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, of fifteen hundred linear feet of said Camp Bird vein, lode, ledge', etc."

NEW IDRIA MINING COMPANY.

The departmental decision of August 4, 1871, rejected the application of this company for a patent for certain quicksilver mines in Fresno county, California, because:

1. Some of the necessary steps were taken in direct violation of the orders of the proper officers of the Interior Department.
2. The evidence was defective in not showing that the proper notice and diagram were posted up on the premises, and in not identifying the claims alleged in the petition or advertisement.

3. There was not sufficient proof of the citizenship of the claimants, and the amount of land exceeded that authorized by law.

On review it is held:

1. That the Surveyor-General and Register and Receiver cannot properly be said to have disobeyed their orders, as they were ordered not to receive any application for mineral claims within the boundaries of the Panoche Grande Rancho, as it is shown that said Rancho, according to the petition and decree, is located some ten miles distant from the New Idria mines.
2. The proof of posting notice and diagram is still defective. The identity of the claims is now satisfactorily shown.
3. The defect in proof of citizenship was cured by the mining act of May 10, 1872. The departmental decision was erroneous as to the quantity of land that could be entered on locations made prior to July 26, 1866. The quantity is only limited by the local mining laws and regulations in force at the date of location. The amount of 480 acres, the quantity applied for, is in excess of the quantity that could properly be located by the parties from whom the New Idria Company derive title.

The departmental decision of August 4, 1871, is sustained, and the application for patent denied.

Secretary Schurz to Commissioner Williamson, July 26, 1879.

I have considered the application of the New Idria Mining Company of California, for a reconsideration of departmental decision of August 4, 1871, rejecting the application of said company for a patent for 480 acres of mineral land situate in Fresno county, in the State of California.

The application for patent was rejected for the following reasons:

"First. Some of the necessary steps in the case were taken in direct violation of the orders of the proper officers of the Interior Department."

"Second. The evidence is defective in not showing that the proper notice and diagram were posted up on the premises, and in not identifying the claims alleged in the petition or advertisement."

"Third. There is not sufficient proof of the citizenship of the claimants, and the amount of land claimed exceeds that authorized by law."

The application for this review was filed in this department December 15, 1871, and was rejected by departmental decision of April 27, 1872. On June 15, 1872, however, my predecessor, Hon. C. Delano, revoked the departmental decision of April 27, 1872, and directed that the application should stand for consideration as if said decision had not been made.

The petition of said company for review requests an opportunity to be heard on the objections raised to the application for patent in the decision of August 4, 1871, and also to furnish testimony in support of the citizenship of its stockholders and officers.

No proceedings have been taken in the case since the order of my predecessor of June 15, 1872, above mentioned, looking to final action on the petition for review, until the present time, owing to the fact that the right of said company to a patent for the tract claimed has been questioned both in Congress and in the courts by William McGarrahan, who alleged that said mines were situate within the limits of the Rancho Panoche Grande, owned by him.

It having been finally determined by the Supreme Court of the United States (see United States *vs.* Gomez, 23 Howard 326, 1 Wallace 698, 3 Wallace 752, 9 Wallace 298, and McGarrahan *vs.* Mining Company, 6 Otto 316), that the Panoche Grande claim was fraudulent

and invalid, and that Mr. McGarrahan had no right to any land thereunder, and no action having been taken by Congress looking to a further suspension of the proceedings in this case, I think the application should now be taken up and the questions involved decided. Parties who bring their cases before this department have a right to have them acted upon and determined within a reasonable time. The first objection to the application was that "some of the necessary steps in the case were taken in direct violation of the orders of the proper officer of the Interior Department." This objection refers to the action taken by the Surveyor-General of California, and the Register and Receiver of the United States Land Office at San Francisco, in causing a survey to be made of the tract claimed by the New Idria company, and in receiving the application to purchase the same and publishing the notices required by the act of July 26, 1866. (14 Statutes, p. 251.)

Your office, by letters of April 18th and May 23, 1867, and February 1, and August 18, 1868, instructed the Surveyor-General of California, and the Registers and Receivers in whose land districts the Rancho Panoche Grande and New Idria mines were supposed to be, not to receive any application for mineral claims within the boundaries of said Rancho.

Notwithstanding these instructions, the Surveyor-General caused the mine to be surveyed, and the Register and Receiver of the San Francisco land district received the application of said company to purchase the tract described in the survey, published a notice of the fact that such application had been made, and at the expiration of said publication allowed the entry and received payment therefor.

This action, in view of the instructions received and the proceedings pending in Congress, was very improper, and should have been visited with such punishment as the Department at that time had the power to inflict.

Upon such application being made, said officers should have submitted it to the Department, giving their reasons, if any they had, why the same, notwithstanding the instructions received, should be allowed; and if, as it subsequently was made to appear, the mine or the tract included within the application was not within the boundaries of the Panoche Grande Rancho, that fact should have been explained. As above stated, I think it is clear beyond a reasonable doubt that said mineral claim is not within the boundaries of the Panoche Grande Rancho, as described in the petition of Gomez to the Mexican Governor for the grant, nor in the decree of the District Court which was subsequently set aside.

In Gomez' petition he says, "I pray your excellency to be pleased to concede me in property, the place known by the name of Panoche Grande, bounded on the *north* by Don Julian Ursula; on the *south* by the serrania (mountain range); on the *east* by the Valle de los Tulares, and on the *west* by Don Francisco Arias, which tract contains three square leagues—a little more or less, as shown by the map which in due time I will present more correctly drawn than the one now presented."

In the decree of the district court confirming said claim, it is described as follows: "The tract of land situated in the county of Fres-

no, State of California, known by the name of Panoche Grande, bounded *northerly* by the lands of Don Julian Ursula; *southerly* by the hills; *easterly* by the Valley of the Tulares; and *westerly* by the lands of Don Francisco Arias, containing four square leagues of land and no more; provided that that quantity is contained within the boundaries aforesaid, and provided also if a less quantity is contained within the boundaries aforesaid, that confirmation of such less quantity is hereby made to said claimant; and for a more particular description of which said lands, reference is hereby made to the map contained in the transcript of the case."

It will thus be seen that the boundaries of the rancho mentioned in the petition and in the decree of the court are the same, and if the grant had been finally confirmed it must have been located within the limits therein described.

The southern boundary of the lands of Don Julian Ursula, known as the "Panoche de San Juan y los Carrisolitos," formed the northern boundary of the Panoche Grande Rancho, according to the calls of the petition and decree. That rancho, having been confirmed, was located and surveyed, and a patent therefor issued July 30, 1867.

The western boundary of the Panoche Grande Rancho was the lands of Francisco Arias, called "Real de los Aguilas." This rancho was located and surveyed, and a patent issued therefor September 23, 1869.

Two of the boundaries, therefore, of the Panoche Grande Rancho, had such rancho ever existed, were definitely fixed by adjoining ranchos.

The southern boundary of said Panoche Grande Rancho was the mountains or hills. This boundary would not have been fixed further south than the chain of mountains forming the southerly boundary of the Panoche Valley, which are more than fifteen miles south of the northerly boundary of the Panoche Grande on a true line.

The Rancho Panoche de San Juan y los Carrisolitos is located in townships 11, 12 and 13 south, ranges 9 and 10 east, M. D. M.

The Rancho Real de los Aguilas is located in townships 13 and 14 south, ranges 7, 8, and 9 east.

The southern boundary of the Panoche Valley is in townships 15 and 16 south. The southern boundary of said Panoche Grande, therefore, if it had been located according to the calls of the petition and decree, must have been at least ten miles north of the New Idria Mine as located—said mine being located partly in township 17 south, and partly in the northern part of township 18 south, range 12 east. As a matter of fact, therefore, neither of said officers, while they may be said to have committed an unwarrantable presumption in giving construction to said orders, can be properly said to have disobeyed the orders issued to them. It is true that a survey of said rancho was made under the instructions of the Surveyor-General of California, in accordance with the provisions of the Act of Congress, approved June 2, 1862. (12 Statutes 410.) In said act it is provided, "but nothing in the law requiring the executive officers to survey land claimed or granted under any laws of the United States, shall be construed either to authorize such officers to pass upon the validity of the titles granted by or under such laws, or to give any greater effect to the surveys made by them than to make such surveys *prima facie* evidence of the true location of the land claimed or granted."

This survey, therefore, simply gave, if all other provisions of law in relation to surveys had been complied with, a *prima facie* location to the grant, if one had ever existed. The *prima facie* location, however, would be overturned by the fixed boundaries of the grant, as described in the petition and decree; and said survey having located the rancho a long distance from where it could have been located according to the calls of said petition and decree, it had no force or effect.

The Supreme Court of the State of California, in the case of McGarrahan *vs.* Maxwell *et al.* (28 California 75), decided that said survey of the Panoche Grande Rancho not having been published as required by the act of 1860, was not *prima facie* evidence of the true location of said grant.

No appeal was taken from said decision by Mr. McGarrahan.

I must, therefore, conclude that the lands upon which said mineral claim is located never were within the limits described in the petition of Gomez for the Panoche Grande Rancho, and had said rancho been confirmed, it could never have been located so as to include said mines.

The testimony submitted to remove the second objection of the decision of August 4, 1871, in so far it relates to the posting of a notice and diagram upon the mine, is still defective in not showing the date on which said notice and diagram were posted on the mine, and the date on which they ceased to remain so posted.

The third section of the act of July 26, 1866 (14 Stats., 251), provides "that upon the filing of the diagram as provided in the second section of this act and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the Register of the land office shall publish a notice of the same in a newspaper published nearest the location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of such period, if no adverse claim shall have been filed, it shall be the duty of the Surveyor-General, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officers of five dollars per acre, together with the cost of such survey, plat and notice, and *giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days*, the Register of the land office shall transmit to the General Land Office said plat, survey and description, and a patent shall issue for the same thereupon."

Whether the notice and diagram were posted upon the said claim during the time of the publication in the newspaper or not, is not shown by the affidavits filed.

In relation to the last clause of the second objection, it is shown that at the same time that the New Idria company applied for a patent for the New Idria mine, it also applied or gave notice that it would apply for patents for mines called the Victoria and Morning Star. The three notices published had reference to three distinct and separate mines. The New Idria mine embraced within its limits two mines located prior to its location, viz.: the San Carlos and the Molina. At the time the application was filed, however, the San Carlos and the

Molina had been purchased by the New Idria company, and their location merged in the location of said mine, all three being consolidated as one.

Some misunderstanding seems to have existed at the time the departmental decision above mentioned was made, as to these different mines, viz.: whether the Morning Star and the San Carlos were one and the same, or the Victoria and the Molina were the same: this has been satisfactorily explained, and all doubt upon the question removed.

The objections contained in the last clause of the decision of August, 1871, relate to the proof of citizenship of the claimants and the amount of land included in the application.

These propositions will be considered separately.

At the time said application was filed, the company presented proof showing that it was incorporated on the 25th of July, 1858, under the general laws of the State of California, with a capital stock of $23,000, divided into 115 shares, among eleven shareholders. This was not considered sufficient proof of citizenship, and proof was required of the citizenship of each of the shareholders.

By the 7th section of the act of May 10, 1872 (17 Statutes 91), it is provided that "Proof of citizenship under this act, or the acts of July 26, 1866, and July 9, 1870, in the case of an individual, may consist of his own affidavit thereof, and in case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief, and in case of a corporation, organized under the laws of the United States, or of any State or Territory of the United States, by the filing of a certified copy of their charter or certificate of incorporation." (See Section 2321 of Revised Statutes.)

The rule of evidence as to citizenship prescribed in this act has been established since the decision above referred to was made, and in my opinion cures the defect therein mentioned. The application for patent in this case is for 480 acres of mineral land.

The location upon which this application is based was made by H. F. Pitt, P. Collins, and H. G. Balenger, December 13, 1854, and embraced 660 acres of land, including the San Carlos and Molina mines —the latter named mines having been purchased in by the applicant.

The location of the New Idria mine by the parties above mentioned, was made in supposed conformity with the rules and regulations of the San Carlos district, adopted December 4, 1854, which authorized a person or an association of persons to enter 160 acres of land bearing silver and quicksilver ore. Sec. 2d of the Act July 26, 1866, reads as follows:

"*And be it further enacted,* That, whenever any person or association of persons, claim a vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local customs or rules of miners in the district where the same is situated, and having expended in actual labor and improvement thereon an amount not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant or association of claimants to file in the local land office a diagram of the same, so extended, laterally or otherwise, as to conform to the local laws,

customs and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition."

In the Departmental decision above referred to, it was held in effect under the advice of Assistant Attorney-General Smith, that the quantity of land which may be entered on locations made prior to the passage of the Act of 1866, was limited by the last proviso of the 4th section of said Act, which reads as follows: "*And provided further*, That no person may make more than one location on the same lode, and not more than three thousand feet shall be taken in any one claim by any association of persons."

This, I think, was an erroneous construction of the law. In my opinion, by the 2d section of the Act of July, 1866, the claims theretofore located, if in accordance with the local mining laws and regulations, were authorized to be entered, although they might include a greater quantity than three thousand feet on a lode. The condition of things which existed in the mining district prior to the passage of any Act of Congress on the subject, must be taken into consideration in construing this law. Throughout the whole mineral region adventurous persons had explored for mineral wealth; in some instances they had located valuable mines, and in order to protect those mines and their rights, they had adopted laws, rules and regulations, which were enforced by the miners with great rigor. In this condition of things the act of 1866 was passed, and the language used, in my opinion, fully justifies the conclusion that Congress intended that the locations made under the circumstances above mentioned, should stand if they conformed to the rules and regulations of the particular mining district in which the mine was situated. This view of the law is confirmed by the provisions of the Act of May 10, 1872 (17 Stat. 91). The question therefore arises, Was this location in accordance with the rules and regulations of the San Carlos mining district, in which the mine is situated? As above stated, the regulations of that district authorized a person, or an association of persons, to hold 160 acres of land bearing silver or quicksilver ore. The locators of this mine, Pitt, Collins and Balenger, seem to have thought that they could take, under their local rules, a tract of land which would include as much in the aggregate as they could take separately, viz: 160 acres for each, or 480 acres in the aggregate; and in pursuance of such understanding made a location embracing 660 acres.

This location was subsequently cut down to 480 acres when a survey thereof was made (the first survey thereof erroneously including $494\frac{99}{100}$ acres).

The Act of 1866 did not legalize locations not made in accordance with the local rules and regulations, nor did it authorize an entry of a tract included within such unauthorized location. Under the local rules and regulations, Pitt, Collins and Balenger, as an association of persons, had the right to locate a tract of land, including 160 acres, that bore the kind of ore mentioned in their local laws; they had no right to locate any greater quantity.

Their location, therefore, is voidable, at least as to the excess in-

cluded therein. The New Idria Company could acquire from them no greater rights than they possessed by virtue of their location, and by its purchase, therefore, did not acquire the right to have or take a patent for more than 160 acres of land. I must, therefore, agree with the Departmental decision of 1871, in holding that a larger quantity of land is embraced in this application than was contemplated or authorized by law. The application for a reconsideration of Departmental decision of August 4, 1871, and the issuance of patent to said company for the tract claimed, is denied, for the reasons stated.

COLORADO CENTRAL *vs.* AMERICAN FLAG.

Annual expenditures upon lode claims are necessary to date of payment and entry; and the fact that proceedings in court under an adverse claim have been pending for four years, does not waive this requirement.

The claim is not subject to relocation as abandoned ground, until the expiration of the year next succeeding that for which the annual expenditure has been made. No person out of possession can apply for patent.

Acting Commissioner J. M. Armstrong, to Register and Receiver, Central City, Colorado, August 20, 1879.

The papers in mineral entry No. 1074, lots 298 A and B, made in your office, September 18, 1878, by the American Flag Gold Mining Company, upon the American Flag or Bennett Lode, have been examined.

On the 19th of September, 1874, two adverse claims were filed, one by the Colorado Central Gold Mining Company, and the other by James and H. C. Clark. Application for patent was suspended, and suits were commenced within thirty days by these adverse claimants, which were determined at the September, 1878, term of court, four years after their commencement, in favor of the American Flag Gold Mining Company. Certified copies of the judgment rolls were filed in your office September 18, 1878, and thereupon entry of the claim and payment were allowed.

Subsequently, but on the same day, William M. Finlay filed an affidavit protesting against the issuance of patent to the American Flag Gold Mining Company, setting forth that the said company, for more than one year next preceding the 27th day of May, 1876, had failed and entirely neglected to make any improvement or do any work on said property as required by law, and left said property open to relocation and occupation;" that on the 27th day of May, 1876, finding the property thus abandoned, he entered upon and took possession of said claim, relocated it, sunk a shaft more than ten feet deep, and on the 30th of May filed a copy of his relocation notice in the office of the county clerk of Gilpin county, a certified copy of which notice is made a part of his affidavit; that since the 27th day of May, 1876, he had continued in quiet possession of the claim, and had expended more than eight hundred dollars thereon for improvements and labor. He asks that the entry of the American Flag Gold Mining Company be cancelled, and a hearing ordered relative to the failure of said company to make the expenditures on the claim, required by law, and to his relocation.

On the 21st of September, 1878, the company filed affidavits to show that sufficient expenditures had been made by it during the time in which abandonment is alleged, to hold its possession of the premises,

and that it had held continuous possession of same. One of the affiants further testified that the alleged relocation by Finlay was made by working under the American Flag claim from a shaft sunk without its surface boundaries; and that the affiant had held a conversation with the attorney of Finlay, who had told him that Finlay's relocation was made at the instance of the Clarks, parties to one of the suits then pending in the courts against this claim.

There is no question that up to the date of publication of notice the American Flag Gold Mining Company was the rightful holder of this claim. It has maintained this successfully in the courts; but the judgment of the court necessarily related to matters precedent to the application for patent, and extended to nothing subsequent, and such prior right was the only thing in issue.

The statute contemplates no interruption of the annual improvements until this entry and payment of purchase money. No person who is *out of possession* can apply for patent, and one in possession can maintain it only in the prescribed manner. While the statute prescribes one way in which this possession must be maintained, it excludes every other.

By the statutory requirement, the first annual expenditure on this claim should have been made by January 1, 1875, and prior to that date the claim was not subject to relocation; hence, if said company made its annual expenditure by said date, the claim was not subject to relocation prior to January 1, 1876, as the company had the entire year of 1875 in which to make the next annual expenditure; and if such expenditures were made for the year ending December 31, 1875, or, if not so made, but prior to May 27, 1876, the company by its agents resumed work, the claim was not subject to the relocation of Finlay.

A hearing is hereby ordered to determine the facts.

NEVADA RESERVOIR DITCH *vs.* BLUE POINT PLACER.

A suit commenced before a court of one judicial district against a claim lying and situate within another and different district, is not within the meaning of the statute requiring the proceedings to be commenced in a court of "competent jurisdiction."

Acting Commissioner Armstrong to Register and Receiver, Marysville, Cal., Sept. 12, 1879.

I have examined the papers relating to the adverse claim of the Nevada Reservoir Ditch Company against the application for patent to the north half of the Blue Point Placer.

The certificate of Thos. H. Reynolds, clerk, by W. Stevenson, deputy clerk of the 19th judicial district court, dated April 14, 1879, is filed, showing that an action was commenced in said court on the 12th day of April, 1879, wherein the Nevada Reservoir Ditch Company was plaintiff, and Joseph Rogers, M. J. Crawford, and Richard Eccleson as executor, and Susan J. Harvey as executrix of the last will and testament of William Harvey, deceased, defendants, to determine their right of possession to certain mining ground in Tucker Flat Mining District, Yuba County, California.

The 19th judicial district court is in and for the city and county of San Francisco. The county of Yuba, in which the mine in question is situated, is in the 10th judicial district.

Said court in which suit was commenced is not therefore within the

judicial district embracing this claim, and I find nothing in the laws of California giving this court jurisdiction in the case.

Section 2326, U. S. Revised Statutes, requires the adverse claimant "to commence proceedings in a court of competent jurisdiction," within thirty days after filing his claim. In this case such proceedings were not commenced in such court. The adverse claim is rejected.

LINCOLN LODE.

A stipulation between the applicant for patent and a party claiming adversely, that such opposing party may file an adverse claim within twenty days after the period of publication, with the same effect as if filed during such period, is void and of no effect, as the statutory period of sixty days within which an adverse claim may be filed cannot be lengthened or abridged.

Acting Commissioner Armstrong to Register and Receiver, Leadville, Colorado, September 19, 1879.

In the matter of the application for patent to 1500 linear feet upon the Lincoln lode, made in your office, July 31, 1875, by the Lincoln Silver Mining Company, of Colorado, which application was suspended by you for reasons hereinafter stated.

No adverse claim was filed during the period of publication, but a stipulation—setting forth that J. H. Morrison, James McNassor, and the heirs of Sylvester Ferguson, deceased, claimed to own a portion of the land applied for by the Lincoln Silver Mining Company; that it was believed by the parties thereto that the differences existing might be harmoniously settled and suit avoided; that if it should prove that no amicable settlement could be arrived at, then the said Morrison *et al.* should be at liberty, at any time within twenty days after the period of publication should have expired, to file with the Register and Receiver an adverse claim with the same effect as if filed during the period of publication, and proceedings under the application for patent should be suspended by the Register and Receiver until the matter could be adjudicated by the courts—was signed by the attorneys of the respective parties, and filed in the case.

Within the period of twenty days after the expiration of the period of publication, to wit: on the 22d of October, 1875, the last day of publication being the 9th day of said month, an adverse claim was filed with the Register and Receiver, as provided for in the above recited stipulation; and thereupon proceedings were suspended under the application and suit was commenced 20th November, 1875.

By certified copy of court minutes it appears that this cause was, upon motion of plaintiff's attorney, continued from term to term, and on the 24th December, 1878, more than three years after commencement of action, was still pending; and it does not appear that during all this length of time any motion was made by plaintiffs for a rule on defendants to plead, or that issue was joined.

Claimants ask that said adverse claim be dismissed, for the reasons, among others—

First. That the said adverse claim was not filed during the period of publication, but was filed after such period of publication had expired.

Second. That said adverse claim has been waived by negligence of Morrison *et al.*, in prosecuting the suit.

Section 2325 United States Revised Statutes prescribes that "if no

adverse claim shall have been filed with the Register and Receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter *no objection from third parties to the issuance of a patent* shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter."

The succeeding section prescribes the manner in which an adverse claim shall be filed and proceedings stayed.

Where the statute is mandatory, and prescribes one way in which a thing shall be done, it cannot be done in any other way. The statutory provision being that an adverse claim must be filed within the period of publication, and declaring that if not filed within such period "no objection from third parties to the issuance of a patent shall be heard except it be shown that applicant has failed to comply with the terms of this chapter," it is mandatory upon the Register and Receiver, and upon this office, after the expiration of such period of publication, to recognize no adverse claim and hear no objection whatever to the issuance of a patent, except to show that the applicant has not complied with the terms of said chapter.

It is not within the power of applicants for patent to extend or abridge the period of publication. If they can by stipulation change this provision of law, I know of no reason why they might not avoid any other in the same way; and to admit that a specific mandatory provision of a statute can be avoided by agreement of the parties affected by it, would be absurd, and work endless confusion.

Consent cannot give jurisdiction, where no authority of law is given over the subject matter to be adjudicated. As Morrison *et al.* failed to comply with the law, by neglecting to file their adverse claim within the time prescribed by law, which they were bound to know and understand, they cannot now, even by agreement with their opponents, clothe the Register and Receiver with a power not granted by the statute.

Had the adverse claim been properly filed within the period of publication, the question as to whether "reasonable diligence" had been used in the prosecution of the suit filed in pursuance thereof within thirty days from said filing of the adverse claim, would have been a matter for the court to determine, and not this office. (See decision of the Hon. Secretary of the Interior, Iowa Mining Co. *vs.* the Bonanza Mining Co., June 25, 1879.) *Copp's Land Owner*, August number, 1879, page 75. [See page 260.]

STATUTE OF LIMITATION.

Acting Commissioner Armstrong to Smith Bros., Peels Marsh, Nevada, Sept. 20, 1879.

The fact that a party bases his right to a patent on the claim that he has held his land for a period which satisfies the statute of limitation of his state or territory, does not avoid the necessity of publishing and posting notices of his application for patent as in other cases.

MILL SITE.

Acting Commissioner Armstrong to Register and Receiver, Central City, Col., Sept. 24, 1879.

In the matter of surveys Nos. 305, A and B, the plat shows that the mill site (survey No. 305 B) abuts against the end of the lode, and evidently contains within its limits the continuation thereof.

It has been uniformly construed by this office that land contiguous only to the surface ground of a lode claim was not within the prohibition named, and this would ordinarily occur when the mill-site is located contiguous to the side lines of the surface ground.

In this case, as has been stated, the mill-site abuts against the end of the lode, and is not therefore subject to purchase and entry under said ection, as now surveyed.

MILITARY RESERVATION.

Acting Commissioner Armstrong to S. R. De Long, Camp Bowie, Ariz., Sept. 30, 1879.

In reply to your letter stating that, in company with others, you located a gold ledge in July, 1877, that the military reservation at Camp Bowie has since been enlarged so as to include the same, and asking what steps are necessary for you to take to keep your claim alive, you are advised that, while the land is within a government reservation, you can do nothing to sustain it. Should the reservation be removed and the land restored to public occupation, you should relocate your claim.

HEADLIGHT LODE.

Locations of claims must be distinctly marked on the ground; and all records of mining claims must contain, among other things, such a description by reference to some natural object or permanent monument, as will identify the claim.

Actual expenditures by the owners of a mine for which patent is sought are necessary.

The act of February 11, 1875, credits to a lode claim the expenditures made in running a tunnel for the purpose of developing the lode owned by the proprietors of the tunnel.

All surveys of mineral claims for which patent is sought must be connected with some corner of the public surveys, or with some mineral monument or permanent natural object.

Acting Commissioner Armstrong to Register and Receiver, Bodie, California, October 20, 1879.

On the 4th of February, 1879, Edward Clarke, as attorney for George S. Dodge, made, in your office mineral entry No. 69 of the Headlight lode, lot No. 38, in Lake Mining District, Mono county.

On the 7th of June, 1879, the attorneys for "Vivian Claimants," filed protest against issue of patent on said entry.

Ellery C. Ford, Esq., attorney for Dodge, has filed a copy of the location notice of the Vivian mine, from which it appears it was located by William A. Kermode, June 11, 1878, commencing at the southeast end line of the Headlight mine and running in a southeasterly direction to the northwest end line of the Monte Christo mine—675 feet. The Vivian location was, therefore, made four days after the survey of the Headlight, which was made June 7, 1878. While in the Headlight the location notice names "this notice and monument," it was not described in any manner by which it could have been subse-

quently identified, and was in fact, *not referred to at all in making the final survey*, which began at the southeast corner-post of the Mammoth, thus not even assuming to follow the calls of the location notice of record. It then appears, that the Mammoth was located with no reference whatever to any natural object or monument (so far as the record shows), and that the Headlight was surveyed by attaching it to the Mammoth, and ignoring any attempt to identify its locus by the palpably imperfect reference to a monument in its location notice.

I am reluctant to hold any claim void because of uncertainty of description in the original location-notice, and am in no case inclined to do so where the true location can be identified, and the possession under it is shown to have been uninterruptedly in applicants and their grantors. So far as my official action on the case now in question is concerned, I am compelled to conclude that from the record presented, neither absolute nor approximate identity of location and final survey has yet been established, which would justify me in acting favorably upon the claim, even were the case otherwise unobjectionable.

Protestants call the attention of this office to an alleged defect in proof of $500 expenditures. The proof on this point is not entirely satisfactory. It does not appear what improvements or labor, if any, have been expended upon the claim itself.

The deputy surveyor states that the then present owners of the Mammoth had commenced and were diligently prosecuting work on a tunnel about 1,000 feet north of that claim, and that the work, cost of tools, necessary outfit and transportation, have cost about $500; that two-thirds of the Headlight mine is owned by the owners of the Mammoth, and that it is designed to work both mines through the same tunnel; also, that not less than $10,000 have been expended in the purchase and transportation of machinery for the development of the two mines, etc., etc. The act of February 11, 1875 (18 Stats., 315), undoubtedly credits to a lode claim the expenditures made in running a tunnel for the purpose of developing the lode owned by the proprietor of the tunnel.

In this case the owners of the Mammoth commenced the tunnel. The Mammoth was owned by a corporation. The Headlight was owned by an individual. No binding agreement or contract, nor indeed any agreement whatever, between said corporation and said owner of the Headlight, whereby both parties were bound to contribute to the expenses of said tunnel, and were entitled to its use, is shown, and none is even alleged to exist. If (and it would appear to be the fact) the Mammoth Mining Company had opened a tunnel and paid the expenses thereof, to develop their mine, and it was merely *designed*, as expressed by the deputy surveyor, to work both mines through such tunnel, the expenses thereon are not to be credited to the Headlight: because, 1st, In that case the Headlight has actually made no expenditures; 2d. It is not bound to make any, and can frustrate and repudiate the *design* at any time; and 3d. The Mammoth owners, whoever they might have been at the date of survey, may be now or in the future, could likewise *design* something different at their pleasure.

Actual expenditures by the owner of a mine for which patent is sought are absolutely necessary.

The affidavit aforesaid, of A. W. Rose, jr., dated July 11, 1879, that $600 at least was actually expended in working and developing the Headlight mine prior to the incorporation of the Headlight Mining Company, contributes nothing to the point; for it is not shown *when* the Headlight Mining Company was incorporated, nor does it appear on what particular work or improvements such expenditures were made, which is essential.

The affidavit of George S. Dodge to his citizenship, was made before a notary public in San Francisco, and not in the land district in which the Headlight claim is situated. This is contrary to the requirement of Sec. 2335, United States Revised Statutes, and you will be particular hereafter to decline to receive affidavits in a mining claim where the same are not verified before an officer authorized to administer oaths within your land district.

All surveys of mineral claims for which patent is sought must be connected with some corner of the public surveys, or with some mineral monument or permanent natural object. The connecting of one survey with another makes the accuracy of the last wholly dependent upon the perfection of the first survey.

If an error is originally made it is perpetuated, and no survey can be regarded as properly made which is so connected.

TOWN SITE OF SILVER CLIFF *vs.* THE STATE OF COLORADO.

The provision in the act of February 28, 1861, providing for a temporary form of government for the territory of Colorado, respecting sections 16 and 36 in each township, was a reservation—not a grant; and those sections remained the property of the United States until granted by act of March 3, 1875, providing for the admission of Colorado into the Union.

By the proviso to the said act of March 3, 1875, all mineral lands were excepted from its operation; and any section 16 or 36 known to contain minerals prior to the admission of the State is excepted from the grant.

The grant as to school sections surveyed *subsequent* to the admission of the State, took effect upon the approval of the survey by the surveyor-general.

Acting Commissioner Armstrong, to Register and Receiver, Pueblo, Colorado, December 18, 1879.

I have examined the record of proceedings and proof in the case of the Townsite of Silver Cliff *vs.* The State of Colorado, involving the right of the authorities of the town of Silver Cliff to enter, under the laws of the United States, as a townsite, certain lands in section 16, township 22 south, range 72 west, your district.

The application to make such entry by the commissioners appointed for that purpose by the Board of Trustees of the town, was refused by you on the ground that the land involved was a school section, and inured to the State of Colorado under its grant of sections 16 and 36, for school purposes.

The declaration of the claim of the town was filed, and after due notice to the State, a hearing was had, commencing May 8, 1879, to determine the character of the land in said section 16, and whether it was known as mineral land prior to survey. Said section was surveyed from January 20 to 30, 1872, and the survey approved February 10, 1872. The report of the surveyor does not name any indications of minerals.

At said hearing all parties were present. The testimony submitted

shows beyond a reasonable doubt, that the land was known as mineral as early as 1864, and that at different times between that date and 1872, various parties prospected the land, took out specimens of minerals, some of which were assayed and found to yield a good return in silver, with traces of gold. The State cross-examined the witnesses, but introduced none.

The legislation of Congress relating to sections 16 and 36 in each township in Colorado, is as follows:

Section 14 of "An Act to provide a temporary government for the territory of Colorado," approved February 28, 1861 (12 Stats., 172), provides * * * "That when the land in the said territory shall be surveyed under the direction of (the) government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in the States hereafter to be erected out of the same."

This was a reservation, not a grant. Said sections remained the property of the United States, and while the purpose of the reservation was indicated, the power remained in the government to make any other disposition of said sections it might subsequently deem advisable.

The act entitled "An Act to enable the people of Colorado to form a Constitution and State Government, and for the admission of the said State into the Union on an equal footing with the original States," approved March 3, 1875, in section 7, provided, "That sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto, in legal subdivisions of not more than one quarter section, and as contiguous as may be, are hereby granted to said State for the support of common schools."

Section 15 of the same act further provides, "That all mineral lands shall be excepted from the operation and grants of this act." (18 Stats., 474.)

Prior to said act of 1875, Congress had, by acts of July 26, 1866, and May 10, 1872, indicated its policy concerning mineral lands, and provided that they should not be disposed of except as specially provided by law.

Colorado was admitted as a state by proclamation of the President, August 1, 1876, (19 Stats., 665,) pursuant to the provisions of said act of March 3, 1875.

In the present case it is immaterial whether the land was known as mineral prior to survey or subsequent thereto, provided it was so known prior to the admission of the state into the Union, for at that date, and not sooner, said grant took effect as to non-mineral lands in said sections, which had then been surveyed.

The grant, as to such sections surveyed *subsequent* to the admission of the state, took effect at date of the approval of the survey by the United States Surveyor-General.

In the case now under consideration, the land was known to be mineral prior to both survey and admission of the state, and it is immaterial that the surveyor did not discover its true character.

It is also immaterial that said land was not worked and developed

for its mineral until a recent period; for said act of March 3, 1875, does not provide that land which is worked for minerals shall be excepted from the grant, but "all mineral lands," whether worked or not.

The land in question is clearly not within the grant to Colorado for school purposes, but is government land, and subject to sale only under her laws.

The claim of the state is accordingly rejected. You will give due notice hereof to all parties in interest, allow sixty days for appeal, and thereafter promptly report action to this office.

Protests from claimants to mines within the town limits, against granting a patent to said town, which does not except therefrom specifically all surface ground embraced in such claims, and alleging location prior to town occupation, have been received at this office. Should the town make entry and patent issue thereon, it will contain only the following exception: "*Provided*, that no title shall be hereby acquired to any mine of gold, silver, cinnabar or copper, or to any valid mining claim or possession, held under existing laws: and *provided further*, that the grant hereby made is held and declared to be subject to all the conditions, limitations and restrictions contained in section 2386 of the Revised Statutes of the United States, so far as the same are applicable thereto."

In case of the town-site of Central City, Colorado, decided by this office December 23, 1875, and decision affirmed by the Hon. Secretary of the Interior, June 7, 1876, it was held that town-site entry could be made of land overlying lodes or veins, and that patent should issue for such town-site, with said reservation only. Since the date of said decision this rule and practice has uniformly and without exception been followed, and under it the owner of a mining claim is secured in all those rights intended to be granted by the law.

MINERAL *vs.* AGRICULTURAL.

Lands valuable for mineral are reserved from sale, except as otherwise expressly directed by law; and whether any certain lands are mineral or agricultural in character is a question of fact to be determined by proofs, it being immaterial that the lands had been borne on the official records, and sold by the district officers, as agricultural.

While the *right* to a patent is equivalent to a patent issued, yet the purchase of lands containing minerals under laws governing the sale of *agricultural* lands, does not vest any rights whatever in the purchaser, for mineral lands are reserved from sale; and if no right to a patent exist, a patent cannot legally issue.

Secretary Schurz to Commissioner Williamson, December 22, 1879.

I have considered the case of Smith Scogin *vs.* Charles E. Culver and Lucinda Coffman, involving the mineral or non-mineral character of the W. ½ Section 29, and all of Section 30, Town. 2 S., Range 33 W., Camden, Arkansas, on appeal from your decision of June 23, 1879, holding said tracts to be mineral, except as to tracts covered by the homestead entry of Mrs. Coffman; and as to these, requiring her when she makes final proof, to notify all persons alleging such tracts to be mineral, that they may appear and establish the facts.

It appears that the tracts named are embraced in the private entry of said Culver, made April 19, 1878, and that the N. E. ¼ of Section 29 is covered by the homestead entry of Mrs. Coffman, made December 11, 1872.

The plats of survey of this township, showing it to be agricultural land, were approved in January, 1845, and the land therein was offered at public sale in August of the same year. That not sold continued for sale at private entry, until the act of Congress of June 21, 1866, which required the public lands in the State of Arkansas to be sold under the homestead law only.

This act was repealed by that of June 22, 1876, and the lands in question were again offered at public sale (Proclamation No. 828), on February 4, 1878, and those remaining unsold were again offered for sale at private entry. On April 19, 1878, Culver made such entry of the lands in question (with others) by payment of cash, and received the usual receipt and certificate of purchase from the local officers. On June 12, 1878, these officers forwarded to you the sworn statement of Smith Scogin, deputy United States mineral surveyor, under date of May 15th preceding, to the effect that, in the latter part of April preceding, he was called upon to survey one or more mineral claims in said sections, which he did, and that said sections were mineral in character, and that miners had been prospecting and working the same for several months.

You thereupon ordered an investigation touching the character of said sections, and the hearing was held in the following months of July and August. The testimony shows that these sections are situate in a broken and hilly country; that they are of little or no value for agricultural purposes; and that there never have been but two agricultural settlements on them, one of which has "gone to waste," and the other, that of Mrs. Coffman, has a cultivation of eight or more acres, confined to a branch bottom.

Section 2318 Revised Statutes provides that "In all cases lands valuable for mineral shall be reserved from sale, except as otherwise expressly directed by law.".

Whether or not the lands entered by Culver were such lands, is a question of fact to be determined by proofs, and it is immaterial that they had been previously borne on the official records as agricultural lands.

If, at the date of his entry, they were "valuable for minerals," they were "reserved from sale," and the action of the local officers in allowing the entry was of no effect, because in violation of law.

The claim of the appellant that the title to these lands vested in Culver, *eo instanti* upon his purchase at private entry and payment of the purchase money, and that the same cannot be disturbed or divested by the existence of mineral in the land, subsequently brought to the knowledge of the government, cannot, I think, be maintained, under the decisions of the courts and of this Department. If reserved from sale, these lands could neither be legally entered nor patented.

In Stoddard *et al. vs.* Chambers, 2 Howard 284, the court, ruling that the holder of a New Madrid certificate had a right to locate it only on public land which had been authorized to be sold, say: "The inquiry here is whether the defendant has any title as against the plaintiff, and there seems to be no difficulty in answering the question that he has not. His location was made on lands not liable to be thus appropriated, but expressly reserved; and this was the case when the patent issued. * * * No title can be held valid which has been ac-

quired against law. * * * It would be a most dangerous principle to hold that a patent should carry the legal title, though obtained fraudulently, or against law."

In United States *vs.* Stone, 2 Wallace 525, the court say: "Patents are sometimes issued unadvisedly or by mistake, where the officer has no authority in law to grant them. * * * In such cases courts of law will pronounce them void. The patent is but evidence of a grant, and the officer who issues it acts ministerially and not judicially. If he issues a patent for land reserved from sale by law, such patent is void for want of authority."

In Minter *et al. vs.* Crommeling, 18 How., 87 the court say: "But if the executive officers had no authority to issue the patent because the land was not subject to entry and grant, then it is void, and the want of power may be proved by a defendant at law." 9 Cranch. 99.

Although these decisions, with numerous others to the same effect, hold that a patent issued in violation of law conveys no title, and will be set aside, the principle applies even more forcibly, I think, to an entry merely, where the government retains title, and has not executed a formal instrument of conveyance; and under the same principle I held in my decision of February 16, 1878, in the case of Carron *vs.* Curtis (Copp, April, 1878), that, "should it be shown, however, that valuable mines have been discovered on the tract before patent issues to the agricultural claimant, no patent should issue, as such discovery would determine the mineral character of the land, but the tract should be held subject to disposal as other mineral lands."

The appellant also claims that the right to a patent is equivalent to a patent issued. This is involved in my views above expressed, because if there is no *right* to a patent, none can legally issue. Undoubtedly the courts have ruled as claimed, but their decisions are based upon the fact that the laws leading to the issue of a patent, have been complied with; or, as the court say in Barney *vs.* Dolph, 7 Otto 652, "after the right to it is complete;" or, in Witherspoon *vs.* Drake, 4 Wall. 200, "according to the well-known mode of proceeding at the land office, *if the party is* entitled by law to enter the land, the Receiver gives him a certificate of entry reciting the facts by means of which, in due time, he receives a patent. The contract of purchase is complete when the certificate is executed and delivered, and thereafter the land ceases to be a part of the public domain. * * * But it is insisted that there is a difference between a cash and a donation entry; that the one may be complete when the money is paid, but the other is not perfected until it is confirmed by the General Land Office, and the patent issued. * * * In neither case can the patent be withheld *if the original entry was lawful.*"

An entry made in fraud, or in violation of law, vests no right which is equivalent to a patent, any more than a patent issued under like circumstances vests a title. Nor am I able to appreciate any difference in principle as claimed by the appellant between a cash "private entry" and an entry under other laws, as respects the right to a patent. They must each comply with the requirements of law, before any right obtains, under the rule announced in the case of Witherspoon *vs.* Drake.

If, therefore, the lands embraced in the entry of Culver were in fact mineral lands, they can only be disposed of under the mineral laws,

and his agricultural entry should be canceled. That these lands were not valuable for agriculture, clearly appears from the testimony. It also shows that although minerals have been known to exist in the locality of the lands in question for many years, and detached specimens of floating ore have been from time to time found on the surface, and mining excitements have previously occurred, no practical operations were prosecuted prior to 1878. During the early part of that year, there was much prospecting, many mining locations were made, and well-defined lodes found to exist. The shaft of the "Minnesota" claim was sunk to a depth of about forty feet, and about 350 pounds of ore taken from it, which the testimony indicates to be valuable. Many other lesser shafts were sunk, and practical miners from California and Nevada testify to the mineral character of the land.

These facts tend to show that Culver made his entry with full knowledge of the mineral character of the land, and that, in fact, he made it for mineral, and not for agricultural purposes.

After a full consideration of all the testimony presented in the case, I am of the opinion that the tracts in question are mineral in character, and therefore affirm your decision.

SMUGGLER *vs.* SEVENTY-EIGHT.

Where there is no surface conflict, no stay of proceedings should be had upon an adverse claim filed by the owners of another location, but the surface should be patented, leaving subsequent developments to determine the rights of the respective claimants.

If the allegations of the adverse claimant are true, they do not constitute an adverse claim.

Acting Commissioner Armstrong to Register and Receiver, Leadville, Col., February 28, 1880.

I have examined the papers submitted, constituting the adverse claim of John W. Jacques, as part owner of the "Smuggler Lode," against George B. Robinson *et al.*, claimants and applicants for patent to the "78 Lode," and have arrived at the conclusion that the allegations of fact set forth by said Jacques in his sworn statement are insufficient to constitute a valid adverse claim.

The two claims in dispute are located at right angles to each other, and the surface boundaries do not in any wise conflict or come in contact, but on the contrary are separated at their nearest approach by the surface ground of survey No. 368 of the "Undine" lode, a distance of about 70 feet.

The 78 lode was located September 20, 1878, and the Smuggler lode November 18, of the same year.

The facts alleged by the adverse claimant are in substance, that said Smuggler lode came into possession and ownership of said George B. Robinson, who conveyed one-half thereof to John W. Jacques, adverse claimant herein, and that at the date of said conveyance said Robinson was also owner of one-half of the 78 lode. That the pitch of the 78 lode is toward the Smuggler lode, at an inclination of about eighteen (18°) degrees, and that if patent be granted to said 78 lode, with the right to follow it in its downward course outside of the vertical side lines of the claim, it would convey to said applicants for the 78 lode the right to extract all the ore in the Smuggler lode, thus defeat-

ing the effect of the conveyance from Robinson to Jacques. It is further alleged that the Smuggler lode and 78 lode are one and the same vein.

If the formation of the vein of the 78 claim is such that a patent will give its owners the right to extract all the ore in the Smuggler lode, then the 78 owners have the right already; for the patent merely conveys the fee, while their possessory title assures them all the rights to extract the ore which are conveyed by patent; and if there has been an illegal entry upon the domain of the Smuggler claim, and ore extracted therefrom which belongs to the owners of the Smuggler, such proceedings are wrongful acts, which are the subject of proceedings in a court of competent jurisdiction, whether the 78 claim is patented or not.

Moreover, if the alleged fact be true that a patent would give said right, it follows that the Smuggler location is based upon a discovery of the lode or vein to which the 78 claimants have, by reason of priority of location, the better right, and is a confession by the Smuggler claimants that the top or apex of their vein is within the boundaries of the 78 claim.

As it is shown by the plat filed that the Smuggler location is nearly at right angles with that of the 78 claim, and that their surface boundaries do not conflict or come in contact, the end line of the Smuggler lying opposite the side line of the 78, it is clear that the Smuggler has no right beyond said end line, and the question whether the 78 lode extends under the Smuggler by its lateral dip is one which in no manner effects the right to a patent for the 78 claim. If the 78 vein does so extend, the right of the owners is clear. If, however, the true course of the vein on which both the 78 and the Smuggler claims are located is crosswise the 78, then under the decision of the Supreme Court of the United States in the case of the Flagstaff Silver Mining Company *vs.* Helen Tarbet (see Copp's *Land Owner*, June, 1879), the side lines of the 78 location are the end lines of their claim, and the courts will restrain them from proceeding further. In short, if all the allegations of the adverse claimants are true, they constitute no objection to the issue of patent to the 78 lode.

The 78 lode is the prior location, and is not alleged to conflict as to surface rights; hence the adverse claim would not be good on general demurrer, and should not work a stay of proceedings. If the 78 claimants should mine beyond where it is their right to mine under the law, it would be simply a trespass, to be restrained by injunction and punished by damages obtained by proper proceedings in court.

The rule governing in cases where there is no surface conflict is stated in the decision of the Hon. Secretary of the Interior of 24th February, 1873, in the matter of the application of the Julia Gold and Silver Mining Company for certain claims in Nevada (*Copp's Mining Decisions*, pp. 101, 105). I construe this decision to mean that where there is no surface conflict, no stay of proceedings should be had upon an adverse claim filed by the owners of another location, but that the surface shall be patented, leaving subsequent developments to determine the rights of the respective claimants.

The proposition advanced that Robinson by his conveyance to Jacques of a half interest in the Smuggler Lode, being at the same time

part owner in the 78 lode, passed the right to extract the ore beneath the Smuggler location, a right which had theretofore pertained to the 78 lode, is one of doubtful force, and in any event is wholly immaterial to the present controversy; for even if well founded, the right will obtain as well after issue of patent as before.

For the reasons stated, I must dismiss the adverse claim of John W. Jacques, and hold that George B. Robinson *et al.*, are entitled to patent to the 78 lode.

TOPSEY MINE.

The act of January 22, 1880, allowing the application for a mining patent and affidavits connected therewith to be made by an attorney or agent, applies to residents within the land district who are temporarily absent therefrom, as well as to non-residents.

Secretary Schurz to Commissioner Williamson, March 2, 1880.

I am in receipt of your letter of the 8th of January, 1880, submitting the papers in the matter of Mineral Entry No. 457, Helena District, Montana Territory, on appeal by William Bell Frue, and Nathan S. Vestel, from your decision of October 14, 1879, holding said entry for cancellation.

The entry is of the Topsey lode, designated as lot No. 44 A, and an appurtenant mill-site designated as lot 44 B.

After an examination of the papers, your office, under date of September 10, 1879, addressed a letter to the Register and Receiver pointing out the following defects in the proceedings:

1st. That the title to the mill-site appeared to be in Frue alone, and not in the applicants jointly.

2d. That the application showing compliance with the statutory requirements, was sworn to by the attorney in fact of the respective applicants, and was not "under oath" of the applicants themselves.

3d. That the final affidavit as to posting of notice upon the claim was made by Frue's attorney-in-fact, and not by one of the claimants in person.

You directed the local officers to call upon the claimants to supply the proof required in the manner prescribed by law.

In response thereto, the applicants filed proof of joint ownership of the mill-site.

For the other proofs required, they submitted the affidavit of Vestel, one of the applicants, in which he set forth in effect that, upon information and belief, the notice and plat were posted as the law required, and remained so posted continuously during the entire period of sixty days of publication of notice in the newspaper; that the information upon which he relied was derived mainly from the affidavits of Walter McDermott, who made the former proof as attorney-in-fact of Frue, and Jerry Strange, which affidavits set forth specifically the facts as to the posting of notice and plat on the claim, and of their remaining so posted continuously from July 18 to October 1, 1878; that at the time of posting of said notice both applicants were in the Eastern States, and that, therefore, it was impossible for either of them to testify from personal knowledge.

As to the sworn statement in the application, nothing farther was offered.

After the filing of these proofs, your office, October 14, 1879, held

the entry for cancellation on the ground (1) that the affidavit of Vestel having been made mainly upon information and belief, was not in compliance with law, holding that the statute required this proof to be made from the applicant's personal knowledge; and (2) because the defect in the verification of the application was not cured.

From this decision the appeal was taken.

It further appears, from certain papers in the case, that Frue was a resident of Michigan, and Vestel, of Lewis and Clarke county, M. T., during the pendency of the application before the local officers; and that Frue was then in Detroit, and Vestel in New York.

Since the appeal, Congress has passed an act, approved January 22, 1880 (see February *Land Owner*, p. 179), amending Section 2325 of the Revised Statutes by adding the following words: "That where the claimant for a patent is not a resident of or within the land district wherein the vein lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent, may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: *And Provided*, That this section shall apply to all applications now pending for patents to mineral lands."

If the defects in the proceedings for patent which form the basis of your decision are cured by said act, it will be unnecessary to consider and pass upon the appellant's exceptions.

In your letter of the 8th ultimo, you state as follows: "The bill to amend said section so that non-residents of the land district embracing the claim may apply by agent, does not appear to cover this case, as the residence of one of the owners is within the Helena, Montana, land district."

I think said act should receive a liberal construction. So far as it relates to pending applications it is clearly a remedial act, and so far as it relates to future applications it is an enlarging or beneficial act, and of the kind classed by all law writers as a subdivision of remedial statutes. It is universally held that such a statute is to be liberally construed, and that everything is to be done in advancement of the remedy that may be, consistently with any construction that can be put upon it (Potter's Dwarris 73–4; Sedgwick 360–1). But if the portion of the act under consideration should be construed to limit the remedy or benefit to a non-resident, then in this case the act affords no relief, notwithstanding one of the parties is a non-resident. But it must be construed largely and beneficially, so as to suppress the mischief and advance the remedy (Potter's Dwarris 362; Sedgwick 359), and this brings us to a consideration of the mischief of the old law that was intended to be remedied by the amendment.

All affidavits under the mining act were required to be made within the land district within which the claim lay, and certain of these affidavits were required to be made by the applicant in person. An owner of a mine residing out of the district, or one who was a resident of the district, but temporarily absent from it, desiring to make application for a patent to a mining claim, was compelled to go or return to the district, in order to comply strictly with this requirement, it having been held that such affidavits could not be made by the owner's duly

authorized agent, and where the affidavits had been made by agent, as in this case, and an entry allowed by the local officers, the entry would be canceled.

Unless the language of the act will bear no other construction, it cannot be held that Congress intended to provide a partial remedy for the defects of the old law, or to discriminate against resident mine-owners; and the remedy is certainly not complete unless the new law will permit a mine-owner, if non-resident or not within the district, to have the affidavits which the law required him to make in person made by his authorized agent, and unless it validates pending applications defective only in this, that such affidavits were made by authorized agents in cases in which applicants were unable to make them by reason of being out of the district.

"It is by no means unusual in construing a remedial statute," says Sedgwick (p. 359), "to extend the enacting words beyond their natural import and effect, in order to include cases within the same mischiefs." It certainly would have been as great a hardship for Vestel, the resident owner, being then in New York, to have returned to Montana to make his affidavits within the district, as for Frue, the non-resident, being then in Detroit.

But I think it is not necessary to extend the enacting words beyond their natural import and effect in order to include the case under consideration; for while, without resorting to the rules of equitable or remedial construction, and by applying the ordinary rules of interpretation, the interpretation which you place upon the act might result, it would still, under the same rules, I think, be susceptible of another interpretation by which the case would be included. The language is: "that where the claimant for a patent is not a resident of or within the land district," etc. Now it is evident that an intention to limit the benefits of the act to non-residents would have been as clearly expressed as language can make it by omitting the words "or within," so as to read "not a resident of the land district," or by omitting the words "of or," and reading thus: "not a resident within the land district." So to hold that the act is limited to non-residents involves two things that should be avoided in construction if possible; first, redundancy; and second, the impossibility of giving full force and effect to every word. Such a construction leaves the words "or within" and "of or" without force or meaning, for the intent to thus limit the operations of the section would be clear without them, but it is certainly doubtful with them.

On the other hand, the intent to extend the benefits of the act to all applicants not within the district, would have been clearly expressed by leaving out the words "a resident of or," reading thus: "not within the land district."

The same objections apply to this interpretation as to the other, but with no greater force. Either construction leads to a redundancy, and both are subject to the objection that it is not allowable to take from, or exclude, any words of a statute. What then was in the minds of the law-makers? Evidently, first to provide that claimants who are not residents may be allowed to have the required affidavits made by agents within the districts, "conversant with the facts sought to be established," and to relieve them from the trouble and expense of

going to the districts for the purpose of making affidavits about matters, the facts of which are better known to others already there; and second, to allow resident claimants necessarily absent from their districts to make the proofs in the same manner, and thus relieve them also from the expense, trouble and inconvenience of returning to the district for the purpose of making the affidavits in person. In either case, the proofs must be by agents "conversant with the facts."

By this construction the non-resident applicant would not be compelled to make the affidavits in person in any event, while the resident applicant would be compelled to do so if within the district.

This construction seems to avoid redundancy, and gives effect to all the language of the section of the act under consideration. The idea is made reasonably clear by repeating the words "is not" between "or" and "within," thus: "That where the claimant for a patent is not a resident of or *is not* within the land district," etc., and the sense is not destroyed by omitting to repeat these words; indeed, the sentence might have been subject to criticism as tautological if the words had been repeated. And it seems to me that the use of the words which should have been omitted if the intent was to limit the act of non-resident claimants evidences that *both* classes of claimants were intended to be provided for. But even if this were not clearly apparent from the language of the act itself, under ordinary rules of construction, then it must be admitted that the meaning is doubtful; and the rule is that remedial statutes must be liberally construed, and where the meaning is doubtful they must be construed to extend the remedy. (White *vs.* Steam Tug, etc., 6 Cal. 462; Cullerton *vs.* Mead, 22 Cal. 95; Jackson *vs.* Warren 32, Ill. 331. See also decision of this Department, Streeter *vs.* M. K. T. R. R. *Copp's Land Owner* V. 4, p. 180, where other cases are cited).

I am of opinion that the defects on account of which you held the entry for cancellation are cured by the act of January 22, 1880, and that if the entry is otherwise regular and valid it ought to be patented.

CONSTITUTION *vs.* PHŒNIX.

As the adverse claimant satisfactorily shows the nature, boundaries and extent of his claim, the motion of the applicant for patent to dismiss the adverse claim is overruled.

Commissioner Williamson to Register and Receiver, Salt Lake, Utah, April 15, 1880.

On October 2, S. H. Wooster made application for himself and his co-owner, C. H. Stevens, to enter the Phœnix Mining Claim, lot No. 211, located by himself in 1876. The claim was surveyed on August 5, 1879, and approved September 30, 1879. During the period of publication, viz: December 1, 1879, an adverse claim was filed by the Stuart Mining Company on the Constitution lode. On the 5th of December the attorneys for Wooster filed with the Register and Receiver a motion to dismiss said adverse claim. On or before December 9, 1879, suit was commenced by the Constitution claimants. On December 16, the Register overruled the motion to dismiss, and from this decision the applicant for the Phœnix has appealed. The error assigned is in effect that the adverse claim does not *correctly show* the nature, boundaries, and extent of the ground alleged to be in conflict therein, as is required by Section 2326, Revised Statutes.

The adverse claim alleges that the Stuart Mining Company is the lawful owner and entitled to the possession of about 700 feet in length and 200 feet in width of the alleged Phœnix lode, as shown by the diagram posted on said claim. Exhibit A. is the affidavit of Clayton Harris, the Secretary of the Stuart company, and recites that said company is a duly organized corporation, that it is the owner by purchase, and is in the possession of the Constitution lode and mining claim; that on the 21st of September, 1869, the premises embraced in the Constitution claim were unoccupied and unclaimed mineral lands, and on the day aforesaid, and while the land was so vacant and unclaimed, Henry B. Bustford, Thomas Sappington and others, entered upon and explored said premises and located the Constitution lode; that said location was duly recorded, and that by a chain of conveyances the contestant has succeeded to all the rights of the said locators, and that they have held and worked their claim in accordance with the laws of Congress and the district mining laws. Exhibits B. and C. are the location notice and abstract of title, respectively showing title in the Stuart Mining Company; Exhibit D. is the mining laws of West Mountain District; Exhibit E. evidence of the incorporation of the Stuart Mining Company; and Exhibit F., a duly certified plat sworn to by M. F. Burgess, U. S. Deputy Mineral Surveyor, showing the relative positions of the two claims and the conflict between them, also certifying that $500 has been expended upon the claim. From these exhibits I am unable to see in what respect the adverse claim, or more properly the form thereof, can be considered as uncertain or defective.

The protestant has stated the facts by reason of which he claims title, and has shown the conflict claimed to exist by a duly authenticated plat made on the ground. The claimant of the Phœnix bases his motion to dismiss the adverse claim on the ground that the plat filed by the adverse claimant for the purpose of showing the conflict is platted by other and different metes, directions and boundaries than are given it in the official and approved survey, as well as in the field-notes and descriptions of said Phœnix claim; that the area claimed by the protestants to be in conflict embraces ground not claimed by the owner of the Phœnix in his application, while other ground that he does claim and apply for is thrown out entirely, and in this protest treated as the absolute and undisputed property of the protestant; and it is by reason of such discrepancy, and the consequent failure on the part of the protestants to show the nature, boundaries and extent of the conflict claimed to exist, that the applicant moves to dismiss the protest. He also avers that the plat put in by protestants was not made on the ground, and that it does not agree with the approved plat of survey of the Phœnix.

It is admitted that a conflict of surface ground exists, and it is admitted that the adverse claimant has filed a plat showing the existence of a certain conflict. Nothing more is necessary. Such plat is designed to and *does* show what the adverse claimant claims. He *might* claim an entirely different tract of ground, which if indicated on his plat would be the adverse claim contemplated by the statute. The plat in short is *decisive* as showing the boundaries and extent of the adverse claim. The question is not what the protestant might, but what he actually *does claim, as shown by his plat.* The question then that the claimant asks this office to pass upon is, "Is the survey showing the conflict a correct one?"

Argument is unnecessary to show that this office has no jurisdiction to determine such a question. The claimant claims under one survey, the adverse claimant under another; to decide then which of the two surveys is correct is to decide (to a certain extent) which one of the two parties in interest is entitled to the land; a question the consideration of which is vested in the courts alone. I can see no valid reason for dismissing said adverse claim,

Said appeal is therefore dismissed, and your decision affirmed.

NORTH LEADVILLE *vs.* SEARL.

Where land in the vicinity of valuable mineral deposits is returned as mineral in character on the township plat, clear and positive proof of its non-mineral character can alone overcome the return of the Surveyor-General.

Secretary Schurz to Commissioner Williamson, April 17, 1880.

I have considered the case of the Town-site of North Leadville *vs.* A. D. Searl *et al.*, involving certain tracts of land in Sections 23 and 24, Town 9 S., Range 80 W., Leadville district, Colorado.

The only question at issue or raised by the appeal is as to the charter of the land, the town-site application being resisted on the ground that the tracts are valuable for minerals.

The undisputed facts are that the tracts were returned by the Surveyor-General as mineral land, and that they are in the midst of, and in close proximity to, very valuable gold placers, and lode or carbonate mines producing silver.

But the testimony of witnesses who have worked or prospected the land for minerals, gold and silver, and who were introduced as expert miners, is conflicting. Some found gold in paying quantities, and unhesitatingly give it as their opinion that the land is valuable for minerals, and will pay well for mining purposes, while others failed to find such results or indications as to convince them that the tracts are valuable mineral land, and others unhesitatingly say that they have no value whatever for mining by any known process.

That the land contains valuable minerals hardly any one denies; but upon the question whether the minerals are in paying quantities, the opinions of the witnesses, based upon the results of actual prospecting and comparison of surface indications with those of the surrounding lands which are being profitably worked, are very conflicting; and the question arises whether the evidence is sufficient to overcome the presumption of the Surveyor-General's return, and that raised by the fact of the proximity of known valuable mines. I think not.

After a consideration of all the testimony and of the arguments, both written and oral, I am of opinion that the Surveyor-General's return is not overcome by proof, and that the land should be held as valuable for minerals within the meaning of Section 2318 of the U. S. Revised Statutes.

Your decision dismissing the application of the County Judge to enter the tract as a town-site, and sustaining the Surveyor-General's return, is affirmed.

ANNUAL WORK.

Construction of the act of January 22, 1880, relative to annual labor and improvements.

Commissioner Williamson to H. N. Copp, Washington, D. C., May 1, 1880.

I am in receipt of your letter of 17th ultimo, referring to the question of relocating mines under the law of January 22, 1880, and asking the following questions:

"1. When does a mine located February 1, 1880, become subject to relocation?

"2. When does a mine located April 8, 1875, on which the annual work has heretofore been promptly done, and improvements made, become subject to relocation; provided no work has so far been done since April 8, 1879."

The second section of the act to which you refer is as follows: * * * "*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim; and this section shall apply to all claims located since the tenth day of May, *Anno Domini* eighteen hundred and seventy-two."

It will be perceived that said law seeks to fix the calendar year as the uniform period within which the annual improvements, required by R. S., Section 2324, must be made, and as locations are made at different dates through the year, the first annual expenditures are made due within one year from a common date, to wit: the 1st of January next following the location; thereafter they become due with the expiration of each calendar year.

Hence the first annual expenditures upon a claim located February 1, 1880, become due at the expiration of one year from January 1, 1881, to wit: January 1, 1882, on which day the claim becomes subject to adverse location if the improvements are not made.

In order to apply the law to a claim located April 8, 1875, it is necessary to calculate from the date of location, as there is no other provision for its application, and it is retroactive, and embraces all unpatented claims located since May 10, 1872. The first expenditures upon this location are, therefore, to be reckoned as due within one year from January 1, 1876, to wit: January 1, 1877, and *annually thereafter, by the calendar year.* It follows that, if the annual expenditures were made each *calendar year*, or within the calendar year 1879, the claim is not subject to relocation, and will become so subject only upon the expiration of 1880, and a failure of expenditures for that year. If no expenditures were made in the calendar year 1879, or since, the claim is now subject to adverse location.

LOCATIONS AND SURVEYS.

A mining location must be substantially a parallelogram.

The middle of a vein or lode must be ascertained by actual exploration and development, and cannot be assumed to be in an unexplored position.

The location must be on one vein, and but one vein can be made the basis of the location survey of a mining location.

Commissioner Williamson to Surveyor-General Johnson, Denver, Colorado, May 4, 1880.

Your letter of February 4, 1880, submitting tracings of two surveys,

which you say appear to come directly under the ruling of this office, in the case of the Helvetia Lode, lot No. 212, dated March 6, 1879, and asking for instructions with regard to approving the same, as shown by the tracings, is at hand, and has been considered.

Regarding the location of lode claims, section 2320 of the United States Revised Statutes reads as follows: "A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface." * * * "The end lines of each claim shall be parallel to each other."

The location contemplated by the law above quoted must have been essentially a parallelogram. The wording of the law evidently presupposes such a figure, or it would not have been made to read, *fifteen hundred feet in length by three hundred in width* on each side of the middle of the vein at the surface. Had the complicated figures shown in your tracings been thought possible or likely to occur, the law would have been differently framed in order to meet just such contingencies; for, as I shall endeavor to show, it is only when certain peculiar conditions exist that such a location can be made to satisfy the intent of the Mining Act.

Locators' rights of possession and enjoyment are defined by section 2322 of the U. S. Revised Statutes to be as follows, to wit: "Locators shall have the exclusive right of possession and enjoyment of *all the surface included within the lines of their location, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines, extended downward vertically*, although such veins, lodes or ledges may so far depart from a perpendicular in their downward course as to extend outside the vertical side lines of such surface locations. *But their right of possession of such outside parts* of such veins or ledges *shall be confined to such portions thereof as lie between vertical planes* drawn downward, as above described, through the end lines of their locations, so continued in their own direction that *such planes will intersect such exterior parts of such veins or ledges.* And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another."

The intent of the above-quoted section of the Revised Statutes was held by the Supreme Court in its decision in the case of the Flagstaff Silver Mining Company of Utah *vs.* Helen Tarbet, Copp's *Land Owner*, June, 1879, page 42, to be as follows:

"That mining locations on lodes or veins shall be made thereon lengthwise, in the general direction of such veins or lodes on the surface of the earth where they are discoverable, and that the end lines are to cross the lode and extend vertically downward, and that the right to follow the dip outside the side lines is based upon the hypothesis that the direction of those lines corresponds substantially with the course of the vein or lode at its apex on or near the surface."

"It was not the intent of the law to allow a person to make his location crosswise of a vein so that the *side lines shall cross it*, and thereby give him the right to follow the strike of the vein outside his side lines: that would subvert the whole system sought to be established by the law.

"As the law stands we think that the right to follow the dip of the vein is bounded by the end lines of the claim properly so called, which lines are those which are crosswise of the general course of the vein on the surface. The Spanish mining law confined the owner of a mine to perpendicular lines on every side, but gave greater or less width according to the dip of the vein; but our laws have endeavored to establish a rule, by which each claim shall be so many feet of the vein lengthwise of its course, to any depth below the surface, although laterally *its inclination may carry it ever so far from a perpendicular.*"

Such a location as the one shown in survey No. 709 was evidently never contemplated by the law as above quoted, which clearly means that the claim must be contained between parallel end lines indefinitely extended; for the right of possession to the outside parts of such veins or ledges as may extend in their downward course outside the vertical side lines of the surface location, is based upon the supposition that such right of possession *is limited and confined by the vertical planes drawn downward through the parallel end lines of the surface location extended indefinitely.*

Attention is called in your letter to red lines drawn through the middle of each of the surveys, Nos. 462 and 709, marked "centre of vein," and the deputy says: "The discovery shaft is found in the former to be about 95 feet southerly from the center of the vein, and the center of the vein is in the middle between the side lines of said survey, and that the red lines indicate the center of the lode."

In the very nature of the thing a lode or vein, in its unworked and undeveloped stage, cannot be known and surveyed so as to plat it and make a diagram of it.

No developments or workings are shown upon the lines indicated in the tracings as the center lines of the veins, although in both instances shafts are shown at a considerable distance therefrom.

Particularly is this the case with survey No. 462.

In neither case are any workings indicated or proof offered to show that the lodes or veins make the extraordinary departures from a straight course shown upon the tracings; a line is simply drawn through the center of the claim and called the "center of the vein."

This assumption that the middle of the vein is in an unexplored position is unwarrantable. The middle of the vein must be ascertained by actual exploration and development, or the discovery shaft must, for executive purposes, be taken as the middle of the vein, and the lateral measurements made therefrom.

Concerning the diagrams forwarded by you, and not hereinbefore specifically explained, I may best remark that the statute contemplates a lode location to be *substantially* a parallelogram; and the several calls of the statute, the grant of right, the limitation of rights, and the theory of the law, all point to this conclusion.

I do not intend to be understood as construing the law as requiring a perfect parallelogram; but it must not vary largely from that figure,

for such material variance involves conditions which in a greater or less degree, according to circumstances which at the date of location, and patent even, are most frequently unknown quantities, conflict with the theory of the law, render uncertain the property rights of adjoining owner or owners in the vicinity, and in a patent which should convey the property in that form which will at least render an application of the law to its subsequent use possible, result in rich and apt material for litigation.

A portion of a side line cannot properly be made an end line. Lodes and veins do not separately run in the tortuous manner represented in the diagrams of surveys Nos. 462, 709 and 212.

If the topography of the country does not permit the claimant to take under the law all he claims, yet he must abide by the law.

The law contemplates that he shall make his location on *one vein*, and while certain rights attach to other veins whose top or apex is found within his surface boundaries, yet but one vein can be made the basis of his location.

It is from the middle of that vein that his lateral measurements must be made. The surveys Nos. 462, 709 and 212 indicate the probability that they were made with the intent to embrace therein different and distinct lodes. An examination of the attached plat of the Jay lode, lot No. 169, Boulder county, Colorado, indicates the ease with which surveys, such as you submit, could include several separate and distinct veins, and as a geological proposition it is extremely improbable that the survey you forward can be defended.

I cannot authorize their approval in their present form, and before giving them your approval, you will require such modification as will bring them within the proper form as above indicated.

MOONSTONE FRACTION *vs.* GOLDEN TERRA.

Adverse claim rejected because the adverse lode was located a few days prior to the expiration of the published notice, and the allegations do not properly constitute an adverse claim.

Register and Receiver, Deadwood, Dakota, June 28, 1880.

I have examined the adverse claim of Walter E. Snead, claimant of the "Moonstone Fraction Lode" against the application of the Deadwood Mining Company for patent to the Golden Terra Mine, situate in Whitewood Quartz Mining District, Lawrence county, which application was filed in your office March 28, 1879; and said adverse claim is hereby dismissed for the reason that the same does not upon its face show that the said Walter E. Snead has any right or title to the premises in dispute, or rather that the facts alleged by said Snead, if admitted to be true, conclusively show that he has no right or title whatever to the same.

The record shows that the Golden Terra lode was located February 21, 1876, and re-located after the ratification of the agreement with the Sioux Indians, by the owners, in order to perfect their title. By mesne conveyances the title became invested in the Deadwood Mining Company, which applied for patent. A survey was made of the claim February 26, 1879, which was approved by the Surveyor-General March 12, 1879. Notice of application for patent was published in the Black Hills *Weekly Herald*, from the 29th day of March to June 1, 1879,

during which period copies of said notice and diagrams of the claim were posted in a conspicuous place on the claim and in your office.

On the 28th day of May, 1879, two days before the expiration of the period of publication, Walter E. Snead filed his adverse claim. He alleges under oath that he is owner of the Moonstone Fraction lode, which is entirely included within the boundaries of the Golden Terra lode, and embraces a piece of ground two hundred and forty feet long and one hundred and seventy feet wide, in the northeast corner of the Golden Terra claim. He bases his claim of ownership upon a location made May 26, 1879, or two days before filing his adverse claim, and only four days before the expiration of the period of publication. He does not allege that the location of the Golden Terra lode, made many years before, was illegal or invalid from any cause, or that it had been abandoned. The law requires that an adverse claimant shall set forth under oath the "nature, boundaries, and extent" of his adverse claim. The "nature" of the present adverse claim, as set forth under oath of Snead, shows that it has no foundation whatever.

CONEY *vs.* MAMMOTH.

The provisions of the mining law for the adjudication of adverse claims in the courts does not contemplate that the sale of the public mineral lands shall be indefinitely postponed, upon the simple filing of a complaint. The adverse claim must be prosecuted with due diligence.

Commissioner Williamson to Register and Receiver, Central City, Colorado, July 15, 1880.

Referring to my decision of June 26, 1880, in the matter of the adverse claim of Philip J. Lonergan *et al.*, upon the Coney lode, against the application of Henderson H. Eddy for patent to the Mammoth lode, in which I held said adverse claim to be sufficient both in form and substance, counsel for applicant, have filed certificate of the clerk of court for the First Judicial District of Colorado, to the fact that on the 16th day of February, 1880, said adverse claimants filed a bill of complaint in said court against said Eddy, involving the matter of the Coney and Mammoth lodes, but that up to the second day of June last, the date of said certificate, no summons had been issued in pursuance of said complaint.

The Code of Colorado provides that "the clerk shall indorse on the complaint the day, month and year the same is filed; and at any time within one month after the filing of the same, the plaintiff may have summons issued."

Section 2326 United States Revised Statutes provides, "it shall be the duty of the adverse claimant within thirty days after filing his claim, to *commence* proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence, and a failure to do so shall be a waiver of his adverse claim." Upon the commencement of such proceedings, all action in the local office must be stayed until the controversy has "been settled or decided by a court of competent jurisdiction, or the adverse claim waived."

Counsel now move to dismiss said adverse claim, on the ground that the adverse claimants have failed to prosecute their suit with "reasonable diligence," as required by the statute. I am of opinion that the

negligence in this instance is positive; but it is also clear that the adverse claimants have not *commenced* their suit in the manner contemplated by the statute. Until a summons is issued, the court acquires no jurisdiction over the subject matter in controversy. The law contemplates that the sale of the public lands shall not be delayed by controversies of this character for a longer period than is necessary for the proper legal adjudication of the dispute. In some States the summons may issue at any time after the filing of the complaint. In California it may issue at any time within one year.

To hold that by the simple filing of a complaint, without having summons issued, an adverse claimant may indefinitely postpone the sale of the public mineral lands, was never contemplated.

It is clear that the court in the present case cannot acquire jurisdiction of the matter at issue, except by the consent of the parties, without the filing of a new complaint, long after the expiration of the statutory period for the commencement of actions to decide the merits of adverse claims. I therefore allow the motion of the counsel, and dismiss the adverse claim of Lonergan *et al.*, on the several grounds that they have not proceeded with due diligence, and have not commenced their action in the manner contemplated by the law.

SOUTHERN PACIFIC RAILROAD *vs.* KAWEAH LIMESTONE LEDGE.

Limestone deposits do not, as minerals, except land from railroad grants in terms similar to the one to the Southern Pacific Railroad prior to 1872. Lands in California, containing limestone, and useless for agriculture, can be purchased only under the timber and stone act of June 3, 1878.

Commissioner Williamson to Register and Receiver, Visalia, California, August 5, 1880.

I have examined the papers in the matter of the application of Elias Jacob to enter, under the laws providing for the sale of mineral lands, lot 37, being partly within the N. E. ¼ Section 35, Township 17 S., of Range 27 E., M. D. M. in Tulare county, California.

The claim is known as the "Kaweah Limestone Ledge Mine."

The report of P. Y. Baker, U. S. Deputy Mineral Surveyor, dated March 12, 1879, is to the effect that the limestone is of good quality, and the land more valuable for its limestone than for agricultural purposes.

The improvements: one excavation from which stone has been removed; about one hundred cubic feet of stone on the dump; open cuts running to the lode; roadway to the dump; three lime-kilns in good order; one dwelling-house, and shed for horses.

The value of said improvements he estimates to exceed $1,000.

The claim was located 1500 by 600 feet, February 18, 1879, by Elias Jacob, and recorded February 24, 1879, in Recorder's office of Tulare county.

Application for patent was filed April 18, 1879.

Publication of notice in the Tulare *Weekly Times* from April 19th to the 21st June, 1879, the legal period; posting on the claim and in the Register's office continued for the same time.

July 28, 1879, the clerk of the Tulare County and District Courts certified that no suit or action involving said claim was pending or had been theretofore brought; and July 30, 1879, Mr. Jacob applied to make entry, and tendered the purchase money.

On the 18th of June, 1879, James Newton filed an adverse claim against Jacob's application, basing his allegation of ownership on his pre-emption claim involved in the case of said Newton *vs.* The Southern Pacific Railroad Company, and pending decision in this department.

Newton, in said adverse claim, concedes the value of the land to be its limestone, which he says is inexhaustible.

He failed to bring suit within the statutory period, and was entitled to no stay of proceedings upon his claim as filed: First, because a homestead is not the subject of an adverse claim; and Second, if it had been, his allegations of right were wholly imperfect.

July 31, 1879, supplemental objections were filed by Newton's attorney. In some points they are in direct contradiction to Newton's former affidavit, and in others unimportant, requiring no specific attention.

The Honorable Secretary of the Interior finally rejected the settlement claim of Newton, February 5, 1880, and his right need be no further discussed.

A protest dated August 1, 1879, was filed by D. K. Zumwalt, attorney for the Southern Pacific Railroad Company, setting forth that limestone is not usually classed as mineral, and that at the time of the grant to said railroad company, only the precious metals were dealt with by the government as minerals in its disposition of lands, and was not intended to be excepted from the grant to said company, and that no notice had been served on said company or its said attorney.

The Company was only entitled to the notice given by publication as aforesaid.

August 1, 1879, you transmitted the papers to this office, with the statement that in your opinion the entry of Jacob must be allowed, but in view of said protest you deemed it proper to refer the matter to this office. The land in question is within the limits of the grant to the Southern Pacific Railroad Company, whose right, in the absence of any objection, would attach thereto October 3, 1872.

The grant was made to said Company, Section 18, Act July 27, 1866 (14 Stats. 292), subject to the same conditions as the grant to the Atlantic and Pacific Railroad Company. The grant to the last named company (Section 3 of said Act) was of "every alternate section of public land, *not mineral*, designated by odd numbers," etc.

Was land of this character mineral within the meaning of the law?

The Act of Congress of July 26, 1866 (14 Stats. 251), provided that "the mineral lands of the public domain * * * are hereby declared to be free and open to exploration and occupation."

What lands were designated by the act as mineral appears in Sections 2 and 10, as "a vein or lode of quartz, or other rock in place, bearing *gold, silver, cinnabar* or *copper*."

Section 12 of the Act of July 9, 1870, providing for the entry and patenting of placer claims, included "all forms of deposit, excepting veins of quartz or other rock in place."

The Act of May 10, 1872, provided for the survey, entry and patenting of "mining claims upon veins or lodes of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, *or other valuable deposits*."

By circular issued to Surveyors-General and local land officers, July 15, 1873, it was held, in effect, that all valuable mineral deposits were subject to entry under the Act of May 10, 1872.

I am not aware, however, that application has ever been made under the act of 1866, for a patent on a limestone ledge; but, on the contrary, where the land was agricultural, and not used for manufacturing purposes, existence of limestone constituted no objection to its entry as agricultural land.

The act making the grant to the railroad company authorized "said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth:" and only reserved from the otherwise unappropriated land granted, such as was mineral in character.

I am clearly of the opinion that the act did not except from the grant as mineral such land as was simply valuable for its deposit of limestone, for such lands under the laws then in force were not subject to disposal as mineral; but, as before stated, were disposed of as agricultural when used for agricultural purposes.

Aside from these considerations, I find upon the statute books an act of Congress providing a specific mode for the acquisition of title to lands valuable chiefly for stone. This act, which was approved June 3, 1878, provides that lands of such character in the State of California shall be sold to qualified applicants at the rate of $2.50 per acre.

I entertain grave doubts that limestone should be classed as a mineral, or disposed of as *mineral land* under any of the laws of the United States. If such lands are to be classed as mineral, they must necessarily be reserved from disposal under the laws providing for settlement rights; and in that manner parties who are now occupying lands for agricultural purposes, and who have, perhaps, made extensive improvements, would be prevented from acquiring title under the pre-emption, homestead, or other agricultural land laws.

The Act of June, 1878, may be considered a Congressional interpretation of the mining laws then in force, to the extent of holding that they did not provide a mode for the disposal of land valuable chiefly for stone.

This office has decided but one regularly presented case involving the question as to whether land valuable for limestone was subject to entry under the mining laws. Such decision was undoubtedly based upon the opinion of Attorney-General Williams, stated in his communication of August 31, 1872, to the Honorable Secretary of the Interior.

In said opinion it is held that diamonds are "valuable mineral deposits," and the land having such a deposit is subject to entry under Sections 1 and 6 of the Act of May 10, 1872 (Sections 2319 and 2325 Revised Statutes).

The Honorable Attorney-General states: "Public lands, for the purpose of sale, are divided into agricultural and mineral lands. The minimum price of the former is $1.25, and of the latter $5.00 per acre; mineral lands, exclusive of their mineral deposits, are generally worth little or nothing.

"Prior to the Act of July 26, 1866 (14 Statutes 257) it was customary for persons to take those deposits without respect to the right of the

United States. Congress then provided a way in which persons locating lands for mining purposes might acquire title, and other acts have since been passed promotive of the same end. I think those acts ought to be most liberally construed, so as to facilitate the sale of such lands; for in that way, and not otherwise, can they be made to contribute something to the revenues of the government, and controversy and litigation in mining localities to a great extent prevented."

Two principal objects are, under the law and the ruling referred to, accomplished: first, the classification of the land, either as mineral or agricultural; and, second, if mineral, the sale of the same at an increased price. Land which prior to July 26, 1866, could only be sold at a regular offering, could now be disposed of by the government and a valid title conferred upon the purchaser.

But in carrying out the idea of classification, the moment land valuble for certain character of stone is decided to contain "valuable mineral deposits," it is no longer, unless the mineral is useless on account of the expense and labor in procuring it, subject to entry under the various agricultural land laws, and is excluded from all grants of land which make an exception of mineral lands.

In my opinion lands valuable for limestone do not necessarily fall within the classification of lands as mineral under the opinion of the Honorable Attorney-General.

And in view of the fact that since said opinion was rendered, Congress has by legislation provided a special mode for the sale of such lands, I am not inclined to treat them as mineral.

In treating of the classification of land into mineral and agricultural, I am not strictly confined to the geological terms and definitions. Lands which are principally valuable for agricultural pursuits, may contain mineral deposits, as the term mineral is scientifically applied. Under the United States mining laws, the deposit should be *a valuable* mineral, and in the administration of the law, I am often called upon to decide in a case between agricultural claimants and mineral affiants, whether the land is *more valuable* for agricultural than for mineral purposes.

The location of Jacob was made after the passage of the act of June, 1878, and, if admissible at all, the entry should have been under that act; but the land is not subject to disposal under that act, for the reason that the right of the railroad company attached to said land under its grant, there being no valid adverse claim to the same at the date of withdrawal, or on the 3d of October, 1872.

The application of Jacob is refused, and the land is awarded to the railroad company.

Notify parties in interest of this action; allow the usual right of appeal, and report the action taken.

ORIENT, OCCIDENT, AND UNION TUNNEL LODES.

A claimant, having a mining claim which has been located and recorded according to law, has the right to have it surveyed and platted in accordance with the location, by or under the direction of the Surveyor General.

The procuring of an official survey of a mining claim is an *ex parte* proceeding, in which the claimant alone is interested, and no one except the claimant can have the right to appeal from the approval or disapproval of the survey.

Acting Secretary Bell to Commissioner Williamson, August 9, 1880.

I am in receipt of your letter of the 24th June, accompanied with

the papers, in the matter of the protest of M. Shaughnessy against approval by the surveyor general of Utah Territory, of the surveys of the following mining claims, to wit: The Orient, the Occident, Union Tunnel No. 1, and Union Tunnel No. 2, situate in Uintah Mining District, in said Territory. The claims purport to have been located in pursuance of section 2323 of the Revised Statutes, notices of the locations of which were regularly recorded. The surveys above mentioned are of those locations. There is no charge of misconduct against the deputy who executed the surveys, nor is the correctness of his work in any way questioned. The protest is based upon the alleged fact that the surveys embrace the surface ground of other claims of prior location, founded upon discoveries made from the surface, which claims have already been surveyed, and for which, it is alleged, applications for patents are pending.

Upon the filing of the protest in his office, the surveyor general forwarded the same to your office, together with the field-notes and plats of the surveys, and copies of the said notices of locations, and asked to be instructed in the premises. Finding the facts to be as above stated, and that the locations were correctly surveyed, your office, under date of June 11, 1880, instructed the surveyor general to approve the said surveys; whereupon the protestant, under date of the 21st June, applied by telegram to have the surveyor general instructed to withhold his approval, and to be allowed thirty days within which to appeal from your instructions. You report the whole matter to this Department, and recommend, in effect, that the application be denied. I fully agree with your recommendation. In the first place, a claimant having a mining claim which has been located and recorded according to law, has the right to have it accurately surveyed and platted, in accordance with the location, by or under the direction of the surveyor general; and in order that he may use such survey and plat in the proper prosecution of any right which he may have or allege to patent for such claim from the United States, he is entitled to the surveyor general's approval of the survey, and his usual certificate showing that the same was made in accordance with the law and instructions, and that the plat is correct; provided always, that the claimant pays the expenses of the survey (Revised Statutes, sections 2325, 2326 and 2334; and no one, in my opinion, has the right to be heard before the Surveyor-General, your office or this Department, by protest or otherwise, in opposition to the making or the approving of such survey, or the granting of such certificate, except the party entitled to the survey. The procuring of an official survey of a mining claim is, from its very nature, an *ex parte* proceeding, in which the claimant alone is interested. It prejudices the rights of no one, and settles or decides nothing as regards the title of the claim. When such a survey is procured, it may be used as evidence by the claimant in proceedings for patent. If there be a previous application for a patent of the same lands, such survey cannot be of any value until such prior application be rejected, because such application would withdraw the lands described, from subsequent application. If such prior application be rejected it would, however, be of value to the party making the claim. It is the kind of evidence expressly provided by law for the purpose of identifying a claim and showing its exact location and boundaries; and it is a fun-

damental legal principle that a party may produce competent evidence in support of an asserted right. But such a survey is not conclusive evidence, and may be objected to by an adverse claimant, and overthrown by competent testimony. By this right of objection all adverse parties in interest are fully protected, and may be heard, at the proper time, before tribunals having jurisdiction and ample authority in the premises. Until introduced in evidence for the purposes contemplated by the mining statutes, a survey of a mining claim is not subject to objection by any one but the applicant therefor, nor until then is there any occasion for objection or protest, save by the party for whom the survey is being made. A mining location, or record of location, might, with equal propriety, be objected to or protested against by parties not claiming under it. In every proceeding for patent under the mining statutes, not only does the tribunal before which the matter is pending examine and pass upon the correctness and legality of the survey, but it considers and decides the question of the legality of the location itself. Your office and this Department have undoubted authority to make and enforce all proper and needful regulations concerning the manner of making surveys of mining claims, and exercise general supervisory powers in the premises; and may investigate cases of misconduct or insubordination on the part of deputy surveyors and surveyors-general, and enforce the production of honest and accurate surveys. And I think the enforcement of the circular instructions of your office, of November 20, 1873, which I fully approve, will secure proper surveys of mines, and leave no cause for complaint by any one. From what has been said, it necessarily follows that no one, except a claimant requesting a survey of a mining claim, has the right of appeal from a proposed or an actual approval or disapproval of a survey of such claim, or to appeal from any instructions of your office to the surveyor general regarding such a survey.

CHAVANNE QUARTZ MINE.

Mining locations which fail to conform to the district laws not in conflict with State or Territorial or United States laws, are illegal, and proceedings founded thereon are invalid. Because the district laws have been persistently violated by a majority of the miners of a district, is no evidence that those laws have become a dead letter—especially if a minority have complied therewith.

The Surveyor-General should refuse to approve the survey of a location not made in accordance with the local laws.

A second application for land already applied for should not be received by the local officers.

Acting Commissioner M. E. N. Howell to Register and Receiver, Sacramento, California, August 10, 1880.

On the 29th day of August, 1878, André Chavanne filed in your office an application for patent to the Chavanne Quartz Mine and Mill site, situated in Washington mining district, Calaveras county. Said application embraces five distinct mining claims besides the mill site, three of which, to wit, the McNair, Aspinwall and North Star, are located upon the same vein or lode, while two, the Elk and Eureka, situate immediately south of the McNair, are upon separate and distinct lodes. Due and legal notice of said application was given by publication in the *Calaveras Chronicle*, a weekly newspaper, for a period of ten weeks, commencing September 7, 1878, and ending

November 9, 1878, during which time copies of said notice were posted upon each of said claims, together with plat of survey, and also in your office. On the 14th of November, 1879, you allowed the applicant to enter and pay for the land applied for, with the exception of that portion embraced in the Elk location, which you rejected for reasons which will hereafter be stated. The claimant appealed from your action in rejecting said Elk location, which appeal was transmitted by you with the papers in the case and the entry of the remainder of the land.

Before transmitting these papers you received a protest from J. B. Haggin, claimant of the Hurricane lode, which conflicts with the Elk location, in which a number of objections are urged against the legality of the proceedings of Mr. Chavanne, all of which will be considered in their proper order.

The Elk location having been excluded by you from entry, the above-named J. B. Haggin, who had previously (August 18, 1879,) made application in your office for patent to the Hurricane lode, and received the Register's order for publication of notice, applied to make entry of said Hurricane claim. To this application, however, André Chavanne had filed an adverse claim, as claimant of the Elk location, and for this reason you refused Mr. Haggin's application to make entry. From this action an appeal was taken to this office, and it is urged that the adverse claim filed by Chavanne is insufficient in substance and form, the objections being stated in detail, but need not here be recited.

The United States mining laws confer upon the miners of each mining district the right to make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim, subject to certain requirements. Locations of mining claims which fail to conform to these requirements must be treated as illegal. The laws of Washington mining district provide, among other things:

1st. That no more than one hundred feet of surface ground on each side of the vein or lode shall be embraced in a location.

2d. A recorder shall be elected annually, who shall hold the office until his successor shall be duly qualified.

3d. That all mining locations shall be recorded by said recorder, and must be filed with him for record within thirty days after being made.

4th. No meeting (regular or special) of the miners of this district shall be legal unless assembled in pursuance of a notice signed by at least five miners (claim holders) which shall state the nature of the business to be transacted.

Of the five claims embraced in Mr. Chavanne's application, not one has been located in conformity to the local rules above recited. None have been recorded with the mining recorder; three, to wit, the Aspinwall, North Star and Elk, are six hundred feet in width; and the McNair exceeds in length the limit allowed by the United States laws. There is no record whatever of the latter location, but it is alleged to have been located some time in 1867, "by C. V. McNair for himself" and six minor children and Harry Childers. This makes eight persons, and allowing an additional claim for discovery, they would have been

entitled to locate 1800 feet under the mining act approved July 26, 1866, which permitted two hundred feet to be taken by each locator, with two hundred feet additional for discovery. The claim applied for, however, is 2000 feet in length. It is urged by the claimant that the local laws have become obsolete; that they were adopted in 1867, since which time no meeting of the miners has been held, and the custom has been to observe the United States laws and be governed wholly by them; that it is also the custom to record all claims with the county recorder, and not with the mining recorder.

To a certain extent the evidence shows that this is true. A great majority of the locations of mining claims made in this district have been recorded with the county recorder, and the greater portion of such locations exceed the width allowed by local laws. But it appears equally true that the recorder elected at the miners' meeting in 1867 has continuously from that time kept his office open for the performance of his duties, and in every year up to the present time location notices have been recorded by him, all of which, with one exception, have conformed to the local laws in regard to width of claims. Thus it appears that while many miners have regarded the local laws as in force, and have complied with their requirements, others, and among them the present claimant, have totally disregarded these laws, and paid no attention to the limitations imposed thereby. It does not follow that because a law has been persistently violated by those who owe it obedience, it thereby becomes a dead letter. No such proposition can be sustained or admitted. The laws established by the miners of a mining district derive their force from the act of Congress which permits the adoption of such laws; and where they do not exceed the scope allowed them, and have once been recognized by the miners, they must be held to govern in all cases where the possessory right to a mining claim is to be determined. It has been within the power of the miners of Washington mining district to alter or amend their rules at any time if a majority desired such action, by calling a meeting for that purpose; but not even a majority could presume that the rules, once adopted, were without force, leaving the minority, who entertained a contrary presumption, subject to the restrictions imposed by such rules. In short, in my opinion, the laws adopted by the miners of a mining district must remain in force until amended or repealed by the same authority that established them, or until abolished or modified by a law of the United States, or of the State or Territory within which the mining district is situated.

The various locations embraced in Mr. Chavanne's claim "being illegal and void, the subsequent proceedings, even if in due form, would be invalid." [Copp's Mining Decisions, p. 190.]

The survey of these claims was approved by the Surveyor-General June 26, 1878. Application for patent was made on the 29th day of the following August. After the period of publication had expired, and when the plat and field notes now before me should have been in your office, the Surveyor-General, on the 15th of August, 1879, eliminated the Elk location from said plat and field notes, for the reason that "it is found that the $500 has not been expended upon the Elk location as required by law; that the survey of the lode line has not been run in the field; that the location is not in accordance with the

local laws of the mining district." While the reasons assigned by the Surveyor-General should have been sufficient to cause him to withhold his approval in the first instance, I do not understand how this survey could properly have come before him for re-examination, and I think his action in eliminating the Elk location from the survey should be treated as a nullity. Nevertheless, you should have rejected Mr. Chavanne's application for patent: 1. Because it embraces claims upon more than one lode or vein; and 2. Because the various locations were not made in conformity to the laws of Washington mining district. The Surveyor-General should have refused to approve the survey of the claim because of the latter objection.

Your action in refusing to allow entry of the Elk location is affirmed upon the ground here stated. For the same reason you should not have permitted entry of the residue, and said entry, No. 695, is hereby held for cancellation.

I further hold that you were in error in receiving the application of J. B. Haggin for patent to the Hurricane lode, inasmuch as the same conflicts with the land embraced in Mr. Chavanne's application. Until the latter claim is finally disposed of, no application for patent to land in conflict therewith can properly be received by you. Mr. Haggin's application must be dismissed, and no entry can be allowed except upon new proceedings.

CHAVANNE QUARTZ MINE.—(REVIEW.)

Where an application for patent for mining ground, under which an entry has been allowed, has been rejected by the Commissioner of the General Land Office, an adverse application for the same ground cannot be entertained until the question of appeal to the Secretary of the Interior has been settled.

Commissioner Williamson to Montgomery Blair, September 27, 1880.

I have considered your request filed in this office on the 23d ultimo, for a review of decision of the Acting Commissioner, dated 10th ultimo, dismissing the application of J. B. Haggin for patent to the Hurricane lode, situate in Washington mining district, Calaveras county, California.

Said application was dismissed upon the ground that a great portion of the land applied for was included in the pending application of André Chavanne, and hence at the date of Haggin's application the same was not in market.

Chavanne's application for patent was received by the local officers and an order for publication given. Entry was refused, however, and an appeal taken to this office; but before such refusal, the Register received Haggin's application, and directed notice thereof to be published. The decision of this office rejected Chavanne's application, and allowed sixty days for appeal, which have not yet elapsed. Said decision will not be operative until the time allowed for appeal has expired.

Chavanne filed an adverse claim against Haggin's application, and brought suit to determine the right to the land. It is urged that said adverse claim is insufficient—is not good upon general demurrer—and should be dismissed. It will not be necessary to consider this objection unless the former ruling, dismissing Haggin's application, shall be reversed.

The rule which forbids the reception of an application for patent to a mining claim, which conflicts with a claim embraced in a prior pending application, is derived from that provision of the statute which prescribes the filing of adverse claims. Where the statute prescribes one way in which a thing shall be done, it precludes every other. Chavanne having made application for patent to the Elk mining claim, Haggin, as owner of a conflicting claim, had but one method open to him to protect his interest and have his right determined.

But you now urge that, this office having decided that Chavanne's application was invalid and illegal, it was in reality no application at all, and hence the subsequent application of Haggin should be allowed to stand, the whole object of the prohibition of a second application being to compel another claimant to institute proceedings in the local court, to test the right of possession of the first applicant; and the whole reason of the prohibition fails where the first application is invalid, for no adverse claim need be filed against an application which is illegal and invalid upon its face.

But the statute goes further, and after limiting the time within which an adverse claim may be filed, provides that "thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter." Sec. 2325, U. S. R. S.

Chavanne having filed an application for patent to the land in dispute, no other claim to the same land could be asserted, except in the manner provided by the statute, and, failing to take advantage of that method, Mr. Haggin was precluded from objecting to the issue of a patent, except by pointing out from the record that the applicant had failed to comply with the law. He has no right to assert any claim to the land that this office could consider.

It is my official duty to examine the records of all mining applications, to ascertain whether the claimant has complied with the law and official regulations. If it appears that the law has not been complied with in respect to some particular thing that should have been performed prior to the filing of said application, the case will be rejected; but my action is subject to review upon appeal, and until it becomes final by waiver of appeal or affirmance of the appellate authority, such application, in my opinion, remains a legal appropriation of the land applied for, to which no other claim can be asserted in any manner.

For the reasons stated, I must decline to change the ruling of the Acting Commissioner, as requested.

MOUNTAINEER MINING COMPANY ET AL.

In case of conflict of claim, each claimant has the right to ask and receive his own survey, in the regular order and dispatch of business, without reference to other surveys awaiting approval or in process of execution in every stage of the proceeding. The first in time is the first in right.

While the matter is not submitted on proper appeal, these instructions are issued for guidance in future cases.

Acting-Secretary Bell to the Commissioner of the General Land Office, August 18, 1880.

I have considered the appeal from your instructions of April 12, 1880, to the Surveyor-General of California, in the matter of the de-

livery to John Mains *et al.*, (styling themselves the Mountaineer Mining Company,) the Big Flat Gold Mining Company, and the Big Flat Gravel Mining Company, respectively, of certain mining surveys made by him under partially conflicting locations of placer claims in Del Norte county. November 4, 1879, John Mains *et al.*, and the Big Flat Gold Mining Company, filed applications for the survey of their respective claims, and L. B. Healy, deputy surveyor, was directed to execute the same.

November 6, 1879, the Big Flat Gravel Mining Company applied for survey of its claims, and Charles F. Kaufman was employed as deputy to execute the work.

The grounds covered by these latter applications were a portion of those claimed in the former, although described by subsequent locations under different names; and the conflict does not appear to have been known to the Surveyor-General at the time of ordering the surveys.

On the 19th of January, 1880, the Mountaineer Mining Company and the Big Flat Gold Mining Company each filed its protest against the correctness of Kaufman's survey, and asked that it be held in abeyance until the return of the field notes of Healy's survey, alleging that the Big Flat Gravel Mining Company had "jumped the ground" owned by the said companies respectively, and further setting up their prior applications for survey.

This request appears to have been complied with, for on the 20th of January, the Surveyor-General, in reply to a letter from the Gravel Mining Company relative to the survey, wrote to L. F. Cooper, attorney for said company, as follows: "In reply to your letter of the 15th inst., relative to the survey of the Big Flat Mining Company's claims. I have to say that two sets of instructions covering the same ground have been issued, one each to the United States Deputy Surveyors, Charles Kaufman and L. B. Healy, and it is the intention of this office to have them approved simultaneously.

"It is not possible at present to answer your other question as to how many claims Deputy Healy has surveyed at Big Flat, as his surveys have not been returned to this office."

The letter to which this was a reply is not furnished, nor anywhere set out in the case, consequently it is not shown whether or not formal demand was made for the delivery of Kaufman's surveys.

All parties formally appealed to your office from this action of the Surveyor-General; the Big Flat Gravel Mining Company on the 31st of January, and the other companies on the 2d of February.

The first-named party filed as the basis of appeal an alleged statement of fact, to the effect that the applications for survey made November 4, 1879, by the Mountaineer and Gold Mining Companies were not accompanied by copies of the recorded locations certified by the Recorder of the mining district, but that such copies were certified by an United States Commissioner, and therefore no survey could lawfully be made for said parties. This was accompanied by a copy of a protest claimed to have been made on the 24th of January, 1880, against the execution of such survey, and of the reply of the chief clerk of the Surveyor-General's office, dated the same day, advising Mr. Cooper that the protest or copy thereof would be transmitted to the Surveyor-General, who, it appears, was absent.

The former appeal is from the action of the Surveyor-General in directing the making of said surveys, also from his decision stating his intention to deliver all the surveys simultaneously, and from his refusal to deliver to the Gravel Mining Company their plats and field notes as soon as finished.

The appeal of the Mountaineer and Gold Mining Companies is taken from the decision of January 20, advising the opposing party that it was the intention to approve the plats of the various surveys simultaneously; and the applicants with the appeal give notice of their intention to ask you to direct the Surveyor-General to approve the Healy surveys, and reject those of Kaufman, upon the grounds, 1st. That the decision is contrary to law; 2d. That the Gravel Mining Company has not complied with the law, and the survey was not made in accordance with law and instructions; 3d. That said company is a foreign corporation, and has not complied with the State law relating to such corporations; 4th. That until such compliance be shown, it cannot acquire nor hold title to mines in California; 5th. That the applications of these appellants were filed, and deposit made, prior to those of the Gravel Mining Company.

You declined to pass upon any of the points raised as to the sufficiency of the applications for survey, or the competency of the parties to hold title to or possession of mines, or the facts of compliance or non-compliance with the mining laws. Upon the question of priority you entertained the appeal, and proceeded by way of instruction to go beyond the conclusions of the Surveyor-General, and direct him to first approve and deliver the surveys first applied for, and on a subsequent day to deliver those of the subsequent applicants, giving as a reason the manifest propriety of placing the first applicant for survey in the position of first applicant for patent before the Register of the Land Office, and thus enabling him to sustain the beneficial relations of defendant in a suit should an adverse claim be filed under the mining laws.

Appeal was taken by the Gravel Mining Company from this decision, upon exceptions as follows:

"1. Because it sanctions the refusal of the Surveyor General to deliver the surveys made for the complainants when there was no official information before him that there was any conflict, and when the only objection contained in the protest against it subsequently made was of a nature he was not competent to consider, and had no bearing on the question of the delivery of the surveys.

"2. Because it holds that surveys subsequently made, but on applications previously made, but which were unaccompanied by the copies of location certified by the Recorder of the mining district, as required by the Instructions of 1873, are entitled to priority of delivery."

Upon this appeal elaborate arguments have been filed, *pro* and *con*, and much irrelevant matter has been introduced, involving new issues and allegations of fact. It appears from the statements of counsel that your decision was in fact carried into immediate execution by the Surveyor-General, and the plats and surveys were delivered to and accepted by the respective parties, and have already been presented to the Register of the Land Office as the basis of applications for patent, after due posting upon the grounds embraced by the claims.

If this be so, I am unable to see any reason why the appeal is not subject to immediate dismissal; as no order that could now be given to the Surveyor-General respecting the delivery of the surveys can possibly reach them or affect them in private hands; and whatever injury may have been caused to either party by delaying such delivery has already been done, and cannot be cured by an order to deliver them in any different manner.

That could only be done by consent of all parties to surrender up the plats, and submit the question upon a further demand for delivery.

But, beyond this, it is clear that in the first instance no proper foundation was laid for an appeal from the action of the Surveyor-General. That was not a refusal to deliver perfected and completed surveys upon the demand of any party, so far as the record shows. It was an expression of an intention in a certain event to do a thing at some future time—viz.: to approve certain surveys simultaneously. No reason was given or apparently demanded for such intention, except inferentially from the statement that other surveys had been ordered besides those inquired for by the letter of Mr. Cooper. This mere answer to a letter of inquiry did not amount to a conclusive refusal to deliver the plats, did not show that they had been executed, and did show that they were not yet approved. I think appeal from such a letter would not lie as from a final decision.

The subsequent protest, filed on the 24th of January, certainly gave no right of appeal; for there is no pretense that time was given for action upon it by the Surveyor General, much less that he had acted upon it—and the letter of the chief clerk shows that it had not yet had opportunity to reach him when it was made up as a matter of appeal and asked to be transmitted to you.

The Big Flat Gravel Mining Company had therefore no proper foundation for appeal in the matter affecting its claim for delivery of its surveys. It should have awaited formal demand and refusal upon reasons duly set forth.

The Mountaineer and Big Flat Gold Mining Companies show even less foundation for their appeals. They ostensibly appeal from the letter of the Surveyor-General addressed to the owners of the other alleged locations, at a time when their own surveys were yet confessedly in the hands of the deputy, unexecuted, and not in a condition for delivery. The letter was not directed to them nor binding upon them. They had asked only to have the surveys of Kaufman held in abeyance until Healy's were returned for approval; and this letter to their supposed opponents intimated an intention to do just what they had requested. If their request was intended to go beyond the return of the surveys, and include their prior approval and delivery, they failed to so express it in their protest.

And, however this might be, there was no possibility for the Surveyor-General at that time to make a final appealable order respecting their surveys, for they were not before him for action. They were yet in the hands of the Deputy employed by the claimants to execute the work in the field.

The notification attached to the appeal, that they would ask you for certain specific and detailed instructions, did not make the points therein enumerated appealable matter; for the Surveyor-General had

not considered them, nor passed upon them, nor made any order respecting them. There was, therefore, no proper appeal before you at the date of your instructions.

Those instructions were, however, issued and made to relate to these applications for surveys; and in view of the general practice to be affected by them, I deem it proper to give them such consideration as their importance demands, with a view of deducing a correct and uniform rule for the government of future cases of this nature.

In so far as you declined to take cognizance of any matters affecting the alleged ownership of the mining possessions, or to make any decision upon the same, you were undeniably correct. The reasons therefor are fully set out by you in this case and, also in the case of the protest of M. Shaughnessy against the approval of certain mineral surveys in Utah, submitted by your letter of the 24th of June last, and affirmed by me on the 9th instant.

In that case it was decided that no question relating to the merits of opposing claims could be considered by the Surveyor-General; that the law has provided for the presentation of such matters to the Register and Receiver by the filing of an adverse claim within sixty days after the application for patent; that the merits of the proceedings for patent were then immediately transferred to the courts, unless, by failure to bring suit, the adverse claim was waived. In my decision it was also expressly held that the proceedings for the procuring of an official survey of a mining claim is, from its very nature, *ex parte;* that it prejudices the rights of no one, and settles or decides nothing as regards title; that no one has the right to be heard before the surveying department, by protest or otherwise, in opposition to the making or the approving of the survey, except the party applicant therefor.

Measured by these rules it would appear that the question of priority of application, or execution, or approval, or delivery, is alike removed from contention by conflicting claimants; that each has the right to ask and receive his own survey in the regular order and dispatch of business, and without reference to other surveys awaiting approval, or in process of execution.

The only rule of priority should relate to the order of receipt of the particular work requiring action. If application for survey be made, it should, of course, receive attention in advance of subsequent applications. When placed in the hands of the deputy, with the proper instructions, it should be executed by such deputy in the regular order of his allotted work, and when returned to the Surveyor-General for approval, the surveys should, in like manner, be examined and approved in the regular order of their receipt. If this rule should in the discretion of the Surveyor-General be departed from, it should only be upon good and clear reasons, and in cases where it would work no injury nor prejudice to others.

In cases of located mining claims, the survey, as before intimated, is not the first proceeding. The location is the original step. The survey is but an official marking of what has already been marked and recorded under the laws respecting such locations.

The official survey must follow the record of the location. Whether it conflict or not with another recorded claim, is not material. It is the private property of the claimant, and its value depends upon its

accurate conformity to the record. Having a right to its procurement, no other party should be allowed to intervene to delay its execution or withhold its delivery when prepared. But, in its execution, the deputy is usually designated, and employed by the applicant, and if another deputy, employed in the survey of a different location, under a subsequent application, succeeds by greater diligence in first returning his field work to the Surveyor-General, the first applicant cannot demand that such work shall be set aside, or held to await the return of the deputy employed by him. The order of proceeding is preserved by action upon the work next immediately in hand, not by awaiting the return of work not yet executed, although previously ordered. This is the only reward of diligence; that in all stages of the proceeding, the first in time is the first in right; and, if the execution of the work by the agent selected by the applicant is not completed as early as the work of another by whom he fears he may be anticipated, he must nevertheless accept the situation, and pursue his right accordingly in the subsequent proceedings, whether he shall succeed in securing the advantage of an applicant for patent, or be relegated to the position of adverse claimant. Any other rule would work injustice to the party thus compelled to await action upon the other surveys, and subject him to the delays incident to laches, caprice, favoritism, and the like, or where these do not intervene, to the possibilities of holding a small amount of work for the completion of a much larger contract, with which, except in a small part, his claim is not in conflict.

In so far, therefore, as the action of the Surveyor-General, or your instructions, went beyond these well-defined limits of proper executive action, and made the rights of the parties dependent upon each other, without regard to the condition of the work when it was reached in its proper order, I think there was error. Having no right to question the regularity or sufficiency of the mere application for a survey by other parties until confronted with such survey as matter of evidence in a proper proceeding upon the merits, after issue joined in a competent tribunal, there could arise no question of priority, unless raised by the Surveyor-General himself in holding the one survey to be dependent upon the other, and attempting to control the priority of application for patent before the register by his own will and discretion in the approval and delivery of the plats. This he could not lawfully do; and if he should attempt to so discriminate, his action would be just subject of complaint and protest, and liable to be overruled by you. Prior to delivery of the plats, it might, possibly, upon proper foundation laid, be subject to appeal; but after such delivery there would, as a matter of fact, be no power to afford a remedy; as the *res* of the action would have passed beyond jurisdiction. Consequently, in such a case, recourse to appeal would be futile.

In the present instance such appears to be the condition of the matter. There being nothing to adjudge upon the appeal, it must be dismissed. The practice to be affected will, however, be governed by the foregoing suggestions; and whenever occasion may require, may be enforced by your office by proper instructions.

OLATHE PLACER.

Lode claims within the limits of a placer tract, for which claims patent is not sought in the placer application, are excluded from the placer patent, though lode claims adversely held may be excluded from the survey of such placer claim.

Commissioner Williamson to E. C. Ford, Washington, D. C., Sept. 18, 1880.

On the 14th inst., you filed in this office an argument on behalf of "certain protestants against the application of J. S. Sanderson, for patent to the Olathe Placer Claim," which has been considered in the examination of the papers relating to the entry of said claim, although there is nothing to indicate what particular protestants you represent.

Mr. Sanderson filed his application for patent in the land office at Leadville on the 7th of July, 1879, describing the land as the N. E. ¼ N. E. ¼ Section 24, S. ½ of S. E. ¼, and S. E. ¼ of S. W. ¼, Section 13, Twp. *nine* S. of R. 80 W., 6th prin. meridian. Due notice thereof was given by posting in the local land office, as appears by the certificates of the register: in a "conspicuous place upon the claim, to wit: upon a pine tree, near a shaft, about the centre of the S. E. ¼ of S. E. ¼ of Section 13, where it could be easily seen and examined," as appears by the affidavits of A. H. Mallory and George H. Collins, and by publication of notice from the 12th day of July to the 13th of September, 1879, as required by law.

The published notice accurately describes the land applied for, as situate in California Mining District, and by proper legal subdivisions, but by manifest typographical error the impossible (in Colorado) township number *ninety* is designated instead of *nine*, as it should be. It is not alleged that any person was misled thereby, and it is almost impossible that any one could have been misled by so transparent an error.

The subdivisional description and range being correctly given, it applies alone to the land applied for in the California Mining District. The claim is designated by name; reference is made to the book and page, where the location may be found of record; and the fact that the pendency of the application had a local notoriety, is demonstrated by the number of protests filed before the expiration of the period of publication. The suggestion that protestants were misled appears nowhere in the sworn protests, and seems to have originated through the ingenuity of the counsel.

The claimant, and also George H. Collins (one of the witnesses to posting on claim), make affidavit that said notice remained posted during the entire period of publication, giving dates. R. W. Officer and T. C. McDiortt allege, on behalf of protestants, that no such notice was posted on the claim, that they had often been upon and over the land (160 acres in extent), and never saw any such notice. This negative affidavit cannot, upon general principles, be given weight in opposition to the positive sworn declaration of claimant's witnesses that said notice was duly posted in a particularly described place, and so remained during the entire period prescribed by law. It is possible that other persons might be found who had "often been upon and over the land," without seeing any notice, particularly if they were disinterested persons without claims to protect.

I am of opinion that none of the objections urged against the regularity of proceedings in this case are sufficient to stay the issuance of patent, and it is clear that due notice was given in the manner prescribed by law to all parties having adverse rights of possession to protect.

Before the expiration of the period of publication a number of protestants appeared, who allege that they are owners of lode claims which conflict wholly, or in part, with the land applied for. This office had notice of certain other lode claims conflicting with this placer claim by reason of proceedings had in the local land office and regularly reported. None of the protestants who appeared prior to the expiration of the period of publication commenced suits in court as they might properly have done, and thus stayed proceedings until their alleged rights could be adjudged by the courts, but contented themselves with the position of protestants simply, relying upon this office to protect their lode claims from patent under the proceedings of the placer application.

By claimant's voluntary action, certain lode claims, real or alleged, were excluded from the tract applied for, and also two conflicting placer claims, which reduced the area claimed, from 160 acres to 104 and a fraction acres, and on the 23d of April, 1880, he was permitted to make entry of that amount, to wit: 104.21 acres.

Subsequent to the date of entry, additional protests were filed, alleging the existence of known lodes or veins, in view of which, on the 1st of July last, I directed the Surveyor-General to have made at claimant's expense a survey of the placer claim.

His instructions were to the effect that where lode claims have been duly located, and an application for patent to placer land which embraces such lode claims is made, the plat and survey of such placer should correctly show the locus and extent of the lode claims; that while it is true that the patent for the placer will except from its operation all lodes and veins known to exist at the date thereof, without assuming to do what would be impracticable, viz.: to name and describe them; yet where, as in this case, the owners of certain lode claims have by protest advised this office of the existence of such claims, they should be excluded by metes and bounds. His instructions were to exclude not only such lodes as were admitted to exist, but also all others duly located.

In compliance with these instructions, a survey was made and approved by the Surveyor-General, designated as No. 1095, which reduced the area of the "Olathe" claim from 160 acres, as applied for, and 104.21 acres, as entered, down to 75.76 acres. The deputy who executed the survey, reports that: "Upon the plat I have designated the claims called the 'First Chance,' the 'Four Per Cent,' and the 'Buckeye,' by dotted lines. These pretended lode claims have no mineral lode deposit or rock in place, or anything entitling them to the name of lode claim; the shafts are in wash or drift, and *I hereby certify that no known lodes exist upon the foregoing described placer other than have been excluded from within the exterior boundaries of placer*," and more to the same effect.

After the receipt of this report, several additional protests were received from parties claiming to be owners of conflicting lodes, and I

am requested to have these excluded from the survey and patent also; and it is not unreasonable to suppose that if the Surveyor-General be instructed to examine these alleged claims, his report will be followed by additional protests of the same character, alleging the existence of lodes located and worked, the owners of which will have at last awakened to the necessity of bringing them to the attention of this office.

Where known lodes exist within the boundaries of a placer claim, and application for patent is made for the latter without including an application for the vein or lode claim, such application must be construed as a conclusive declaration that the claimant has no right of possession of the vein or lode: but if a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof. Such is the language of the statute; and it follows that a patent issued for a placer claim which contains a vein or lode the existence of which *is* known, is not a conveyance of any lode deposit which may be included therein. And all placer patents issued embrace a clause of reservation, as follows: "That should any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be claimed or known to exist within the above described premises at the date hereof, the same is expressly excepted and excluded from these presents."

Notwithstanding the general reservation quoted, I deem it my duty before issuing patent for a placer claim to require all vein or lode claims, the existence of which is admitted by the applicant for patent, but not applied for by him, or is reported by the Surveyor-General, to be excluded by actual survey, and the placer claimant should not be permitted to pay for the area so excluded; but in the present case I have already exercised every precaution and used every means at my command to ascertain the existence of known lodes and have them excluded. The Surveyor-General reports that aside from those excluded, no known lodes exist within the boundaries of the Olathe placer claim, and the applicant for patent together with two disinterested persons swear that none exist. This is not conclusive evidence that no such lodes exist, but I think it sufficient to warrant me in issuing patent; and the owners of such lodes, if any exist, will be protected by the reservation clause always inserted.

It follows that if any lodes or veins be known to exist at the date of patent to the placer claim, the owner thereof may make application for patent thereto at the proper land office precisely as if no patent had been issued for the placer claim, and upon regular proceedings being had and proof furnished that said lode was known to exist as aforesaid, patent will issue.

It should be borne in mind that the protestants in this instance might have filed adverse claims, and by commencing suits in court, had their rights judicially determined, and the issue there raised would have involved not only the existence of the lodes, but the amount of surface ground which the lode claimant is entitled to take as against the placer location.

For the reasons stated, I think patent should issue to Mr. Sanderson for the claim as surveyed without further delay.

STATE LAW.

The act of Congress of January 22, 1880, does not annul the provision of the State law of Colorado, which requires a discovery shaft to be sunk within a certain number of days from date of discovery.

Commissioner Williamson to Alfred H. Hale, Ohio, Gunnison County, Colorado, September 25, 1880.

I am in receipt of your communication dated July 23, 1880, wherein you inquire whether the act of Congress approved January 22, 1880, amendatory of the mining act, annuls the Colorado State law in regard to the same matter. That is, "Is a man compelled to sink a ten-foot shaft, or its equivalent, inside of sixty days, to secure his claim from relocation."

The Colorado statute "*governing the location*, manner of recording, amount of work necessary to hold possession of a mining claim," is an enactment made in pursuance of the power conferred by Section 2324 U. S. Revised Statutes, and is in force, except so far as it may conflict with express enactment by Congress.

One of the conditions prescribed by the State Legislature "governing the location" of a mining claim, is that the locator or discoverer "shall locate his lode by first sinking a discovery shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper, if necessary to show a well-defined crevice. Second, by posting at the point of discovery on the surface a plain sign or notice," etc.

Another provision is as follows: "The amount of work done, or improvements made during each year, shall be that prescribed by the mining laws of the United States."

I therefore answer your inquiry in the affirmative; the locator of a mining claim must perform all acts required by the statute, or the local rules and regulations adopted by the miners, in the absence of statutory provisions relating to such locations.

I see no reason why the labor or expenditures necessary to comply with the law in making the location should not apply to the expenditures required by law to be made during the first year.

Under the provisions of the act of Congress approved January 22, 1880, a claim located for instance on the 1st day of July, 1880, and requiring an expenditure of, say, $50 to sink the necessary shaft, etc., it will not be necessary to perform the remaining fifty dollars' worth of work required to complete the prescribed annual expenditure of $100 until the 31st day of December, 1881, the year within which such annual expenditures must be completed beginning to run from the first day of January next succeeding the date of location.

WILDMAN QUARTZ MINE.

The nature, extent and boundaries of an adverse claim being shown, and suit having been brought thereon in a court of competent jurisdiction, the executive department is precluded from taking action, until the controversy has been settled or is decided by the court.

Where adverse re-locations are made prior to the application for patent, controversies as to right of possession growing out of such relocations must be adjudicated in the courts.

Where the alleged abandonment occurred subsequent to publication of notice of appli-

cation for patent, and prior to payment and entry, the executive department would be compelled to take jurisdiction.

The local laws may prescribe a greater annual expenditure than the United States law requires.

Defective proof in this case considered.

Acting Commissioner C. W. Holcomb to Register and Receiver, Sacramento, California, October 21, 1880.

I have examined the matter connected with the appeal of C. T. Wheeler, applicant for patent to the Wildman Quartz Mine, Sutter Creek mining district, Amador, California, from your refusal to permit his entry of the same.

It appears that Wheeler filed application for patent in your office, to said claim, October 2, 1879.

That said application was duly published as required by law, publication commencing October 4, 1879.

That during the period of publication, to wit, on November 13, Wm. Songer and David T. Davies, alleged owners of the Davies lode, filed their adverse claim in your office, and the same being in due and legal form, stay of proceedings was ordered by you.

That on the 21st of November, suit was commenced by said adverse claimants *versus* said applicant for patent, in the district court of the 11th judicial district, in the State of California, which suit is now pending.

On the 18th day of December next following, Wheeler made application at your office to make payment and entry of said "Wildman Quartz Mine," which application was refused by you because of said adverse claim and the suspension of proceedings thereunder.

From your said action Wheeler appealed to this office, assigning in brief as exceptions:

1. That the pretended location of Songer and Davies was not in accordance with section 2324 of the Revised Statutes, in that it was not marked on the ground so that its boundaries could be readily traced.

2. That the notice of said location omits to locate the pretended claim of Songer and Davies with reference to some actual object or permanent monument, so that it can be identified.

3. That the notice of location recites an untruth on its face, in this, "the foregoing description is taken from notice of official survey of said Wildman Quartz Mine, made June 18, 1875, by W. L. McKim, United States deputy surveyor, under instructions from J. R. Hardenbergh, United States Surveyor-General for California, dated April 16, 1874."

That said survey by McKim, was located in Town. 6 N., R. 11 E., M. D. M., and connects it with the section corner common to Sections 5, 6, 7 and 8, of said township; while the pretended location of said Songer and Davies fails to make any reference to the section, township, range or meridian, and that the adoption of the field-notes of the Wildman Quartz Mine survey, approved by the United States Surveyor-General, as the basis of a subsequent location, is not authorized by local rules, customs of miners, or the acts of Congress relating to mines.

4. That the notice of location omits to name the mining district, county or State, within which their pretended claim is located.

5. That there is no evidence to show that the field-notes of the official survey of the Wildman Quartz Mine, made June 18, 1875, under instructions from Surveyor-General Hardenbergh, include, cover or embrace any part of the ground claimed by Songer and Davies in this pretended notice of location.

6. That the notice of location fails to show connection with the Government survey as required by Section 2327 of the Revised Statutes, although a section line divides it in two parts.

7. That it fails to show that the notice of the pretended location was posted on the lode claim, or within the boundaries of the surveys admitted to be included within said pretended location.

8. That the notice of location omits to recite the number of feet owned by Mr. Songer, in the pretended location of Songer and Davies on said lode, and that the notice of location omits to designate the number of feet owned by Davies in said location.

That the location of the pretended claim of Songer and Davies does not include 1,500 feet in length on the vein or lode. That the notice of location pretends to locate $16\frac{23}{100}$ chains along the vein or lode.

That the record of location does not claim or locate the ledge or lode through the length of the surface ground claimed in the pretended location of Songer and Davies.

That locations of lode claims can only be made in feet.

That the notice of location omits to name the pretended claim.

That the surface ground claimed in the pretended notice of location was on the 30th day of July, 1879, not subject to location as a mining claim, it having been applied for as a part of the town-site of Sutter Creek, entered by the county judge as trustee for the inhabitants of said town, on the 1st day of July, 1874, and patented January 20, 1875.

That said adverse claim is defective in that they designated and named the pretended location, the "Davies Quartz Mine," and it does not so appear in the certified copy of the record of location.

That the survey of J. W. Brown, filed with said protest, is defective in the following:

It was not authorized to be made by the United States Surveyor-General for California.

It is not sworn to by the said J. W. Brown.

It was a private survey, made by J. W. Brown under the direction, and by the request, of said Songer and Davies.

By the affidavits of said J. W. Brown, it appears that said Songer and Davies expended in labor and improvements on their pretended location about $125.

That, to entitle said Songer and Davies to a survey of their pretended claim, or to the right to file a protest, they should have expended on their pretended location, in labor and improvements, a sum not less than $500.

Section 2326 of the Revised Statutes requires, where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries and extent of such adverse claim; and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived.

The adverse claim in question was presented under oath by William Songer and David T. Davies.

Said affiants allege a failure by Wheeler and his grantors of labor or improvements required by law, and that said Wildman Quartz Mine was, therefore, subject to location by any other party.

Wherefore, on the 30th day of July, 1879, the said Songer and Davies, citizens of the United States, entered upon, located and claimed the said premises for the purpose of mining thereon, and designated and named the same the "Davies Quartz Mine," and occupied the same as a mining claim.

They submit with said adverse claim, copy of their location notice, duly certified by the deputy clerk and recorder of Amador county.

Said location notice is dated Sutter Creek, California, July 30, 1879.

I regard this as correctly showing the nature of said adverse claim. The boundaries and extent thereof are indicated by field-notes of survey, made by John W. Brown, deputy mineral surveyor, November 1, 1879. The affidavit of the adverse claimants sets forth that said locators, at the time of said location, set stakes on the said lode, and at the corners of the said claim, except on the corners in Main street and Eureka street, in the town of Sutter Creek, where it was impracticable to place stakes or monuments by reason of the constant public use of said street; and placed on the stake on the lode a written notice of location, describing the claim as located.

Said affidavit further alleges that said Davies lode and claim, and the said Wildman lode and claim, are one and the same piece of land, and are bounded by the same lines, and the one includes and contains the whole of the other, and that said Songer and Davies are the owners thereof.

I therefore conclude that the nature, boundaries, and extent of said adverse claim were duly alleged as required by law.

It appears from affidavits submitted by Wheeler, that in March, 1879, Wheeler directed his agent, G. W. Bibbins, to employ men and resume work on the Wildman mine; that said work was resumed in March, 1879, and more than $26.25 expended in such labor; that work was then stopped for the reason that to successfully work the mine it required machinery, and that active operations were postponed pending negotiations for such machinery; and that since the 2d day of October, 1879, work has been resumed on the mine by men in the employment of Mr. Wheeler, and that they are now in the quiet and peaceable possession of said property.

While it would appear in the absence of any denial of facts so alleged, that the pretended location of Songer and Davies was illegal, and while their action in adopting, as their description of such location, the field-notes of the survey made by the applicants for patent in 1879, was anomalous and without precedent, yet, under existing laws, I feel compelled to recognize said adverse claim.

Its nature, boundaries and extent having been shown, I regard it as one which precludes executive action, until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived.

It has been forcibly urged by counsel for applicant before this office, that the question of abandonment by a prior owner is one which is

within the jurisdiction of the Executive Department of the Government.

By Section 2324 U. S. R. S., it is provided that "the miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements," etc.;

In the same section, it is provided as one of the requirements that *not less* than certain amounts named, shall be annually expended upon lode claims. It follows that while the State, Territory, or district, may make requirements of *more* than the amount named in the United States laws, it cannot make a *less* requirement control, because it would be in conflict with the laws of the United States, which name the least sum which will preclude relocation.

Further, the local laws may require expenditures to be made in a certain manner, and within certain periods not named in the United States law, and I am of the opinion that while the conditions which determine the validity of adverse relocations are largely dependent upon local laws, it is perfectly in accord with the system of the mineral laws, and was contemplated, that controversies involving the right of possession and growing out of such relocations, should, where the relocations are made prior to the application for patent, be adjudicated in the courts.

I am also of the opinion that all adverse claims, from whatever source derived, should be presented in the manner prescribed by law, and during the period of publication of notice of application for patent, with a single exception, to wit:

Should the abandonment occur *subsequent* to such publication and prior to entry and payment, a case would be presented of which the executive department would be compelled to take jurisdiction, because the law under that state of facts allows the abandoned ground to be again located by any qualified person, in the same manner as if no location of the same had ever been made, and makes no provision for the determination elsewhere of any question or controversy arising out of this class of conflicting claims.

ANNUAL EXPENDITURE.

Where a mining claim was located October 1, 1879, and the $100 worth of expenditure and labor was made after location and prior to January 1, 1880, such expenditure is not a compliance with law: it must be during the calendar year 1880, except so much as may be required under the local law.

Commissioner Williamson to Hon. N. P. Hill, Denver, Colorado, November 10, 1880.

The question submitted by Mr. Haynes is as follows: "If I locate a mining claim on the 1st day of October, 1879, and complete the assessment or discovery shaft by the 10th day of October, 1879, and proceed immediately to do $100 worth of work, *in addition* to the assessment or discovery shaft work, and complete the said $100 worth of work by the 20th day of October, 1879, will the Department authorities recognize said $100 worth of work as the *first annual* work under the act approved January 22, 1880?"

Section 2 of act of January 22, 1880, is as follows: "That Section 2324 of the Revised Statutes of the United States be amended by adding the following words: '*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, *Anno Domini* eighteen hundred and seventy-two.'"

The Act of May 10, 1872, (Section 2324, Revised Statutes), provided that, "On each claim located after the 10th day of May, 1872, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed, or improvements made, during each year."

Under said section 2324, said annual improvements were due within each year, commencing with the date of location.

Upon claims located prior to May 10, 1872, the first annual expenditures were due by January 1, 1875, and annually thereafter.

The purpose of the amendment of January 22, 1880, was to secure an uniform period within which the annual expenditures should be required on all locations.

In said amendatory act, such period is made to "*commence* on the first day of January succeeding the date of location of such claim."

It therefore follows that a claim located October 1, 1879, requires the expenditure of $100 worth of labor or improvements thereon, within the calendar year 1880, and that whatever may have been expended during the year 1879, will not answer the requirements of expenditures in 1880.

A claim located on any date subsequent to the first day of January, 1879, requires no further expenditure during the remainder of that year than is made necessary by local laws.

GYPSUM.

Gypsum is not a mineral within the meaning of the mining act.

Commissioner Williamson to Z. T. Duvall, Deadwood, Dakota, December 15, 1880.

In my opinion, lands of the public domain containing deposits of gypsum, which is of similar formation to limestone, are not subject to disposal under the mining act. Limestone underlies a great portion of the territory west of the Missouri river, and to reserve such lands from sale as mineral would entirely prevent its development for agricultural purposes.

The term "mineral," in its most comprehensive sense, includes all inorganic substances having a definite chemical composition, and so applied in the construction of section 2318 Revised Statutes, would subject all of the public domain to sale under the mining act. A more reasonable construction of said section, I conclude, will hold it to embrace only such lands as contain valuable deposits of metals, and other substances which give the same a special value greater than that of land containing limestone deposits in any of its forms.

b. SALT SPRINGS AND DEPOSITS.

J. A. ROLLINS.

Acting Commissioner Curtis to J. A. Rollins, Salt Lake City, Utah, April 27, 1874.

You inquire whether salt springs can be patented under the mining acts of Congress.

The mining act of May 10, 1872, provides that lands containing "valuable mineral deposits" may be patented upon compliance with the terms of said act.

Where valuable mineral deposits are found in such quantity and quality as to render the land sought to be patented more valuable on this account than for purposes of agriculture, the tracts containing such valuable mineral deposits may be patented under said mining act.

If, however, the land does not contain *valuable mineral deposits* in quantity and quality sufficient to render the land more valuable on this account than for purposes of agriculture, it cannot be patented under said act, except in the case of mill-sites, which must be non-mineral in character.

If, as you state, you have the possession and the right of possession to said salt springs, and the deposit of salt renders the land more valuable on this account than for agricultural purposes, you can secure a patent therefor upon full compliance with the laws and instructions.

HALL *vs.* LITCHFIELD ET AL.

The policy of the government has been uniform since the inauguration of the public land system to reserve from sale salt springs and the adjacent land.

The proviso in the enabling act admitting Colorado as a State, relative to salt springs, "Provided that no salt spring or lands the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to an individual or individuals, shall by this act be granted to said State," refers to private claims protected by treaty stipulations.

In this case, there is no valuable deposit of salt shown to exist upon the tracts, which are only valuable on account of the salt springs. The filings and applications of all parties were accordingly rejected.

Acting Commissioner Lippincott to Register and Receiver, Fair Play, Col., March 2, 1876.

I have carefully examined the papers and testimony transmitted with your letter of the 1st October, 1875, in case of C. L. Hall *vs.* A. T. Litchfield *et al.*

The question presented is as to the true character of the described tracts. * * *

The testimony submitted in the case is very voluminous and quite contradictory. The N. E. ¼ of N. E. ¼ of Sec. 1, T. 13 S., R. 77 W., was returned by the Surveyor-General as saline lands, and the evidence submitted fails to establish the incorrectness of this return.

The policy of the government has been uniform since the inauguration of the land system to reserve from sale salt springs.

The act of May 18, 1796, (1st Stat. 466,) requires every surveyor to note in his field book the true situation of all mines, salt licks and salt springs, and reserves for future disposition by the United States every salt spring which may be discovered, together with the section of one mile square which includes it.

The act of May 10, 1800, (Stat. 2-73,) continued these reservations, and authorized sales to be made of the public lands by the Register and Receiver, excluding the sections reserved by the above-mentioned act.

The act of March 26, 1804, (Stat. 2-277,) providing for the disposal of the public lands in the Indiana Territory, declares that "the several salt springs in the said territory, together with as many contiguous sections to each as shall be deemed necessary by the President of the United States, shall be reserved for the future disposal of the United States."

It has been the policy of the government to reserve these salt springs and lands from sale, as is evidenced by the text of the different acts regulating the disposal of the public lands.

The act of April 30, 1802, (Stat. 2–173,) admitting the State of Ohio, granted to the State certain salt springs.

The act of April 18, 1818, (Stat. 3–429,) authorizing the admission of the State of Illinois, grants all the salt springs and the lands reserved for the use of the same to the State.

The act of March 6, 1820, (Stat. 3–545,) authorizing the people of Missouri to form a State government and for the admission of the State, provides "that all salt springs not exceeding twelve in number, with six sections of land adjoining to each, shall be granted to the said State, for the use of said State, * * * * *Provided*, that no salt spring, the right whereof now is or hereafter shall be confirmed or adjudged to any individual or individuals, shall by this section be granted to the said State."

The same provision is made in the acts providing for the admission of the following named States, as was provided in case of Missouri, viz:

Arkansas, Stat. 5–58; Michigan, Stat. 5–59; Florida, Stat. 5–789; Iowa, Stat. 5–789; Wisconsin, Stat. 9–58; Minnesota, Stat. 11–166; Oregon, Stat. 11–383; Kansas, Stat. 11–269; Nebraska, Stat. 13–47.

The act approved March 3, 1875, (17 Stat. 474,) enabling the people of Colorado to form a State government, and for the admission of the State into the Union, has the same provisions in regard to salt springs as those contained in the Missouri act.

The Supreme Court of the United States, in the case of Morton *vs.* Nebraska, (21 Wall. 660,) construed the *proviso* in the grant to Nebraska of salt lands. This proviso reads the same in the Nebraska and Colorado acts, viz: "*Provided*, that no salt spring or lands, the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall by this act be granted to said State."

The State of Nebraska is within the limits of the Louisiana purchase. That part of Colorado which embraces the salt springs in controversy lies within the boundaries of the territory ceded by Mexico to the United States. In said decision it was held that "the real purpose of the proviso is to be found in the situation of the country embraced in the Louisiana purchase. The treaty of Paris of April 30, 1803, by which the "province of Louisiana" was acquired, stipulated for the protection of private property. * * In this condition of things Congress thought proper in granting the salt springs to the state to say that no salt springs *the right whereof now is* or shall be confirmed

or adjudged to any individual, shall pass under the grant to the State. Whether this legislation was necessary to save salt springs claimed under the French treaty, it is not important to determine; but manifestly it had this purpose in view, and nothing more. It could not refer to salt springs not thus claimed, because all entry upon them was unlawful on account of previous reservation. * * * This proviso can have little significance in the enabling act of Nebraska, or indeed in many other enabling acts, but Congress doubtless thought proper to introduce it out of the superabundance of caution; as there could be no certainty that in purchased or conquered territory, however remote from settlement, there might not be private claims protected by treaty stipulation to which it would be applicable. It cannot be invoked, however, for the protection of these plaintiffs. When a vested right is spoken of in a statute, it means a right lawfully vested, and this excludes the locations in question, for they were made on lands reserved from sale or entry."

The court also held that "the purpose Congress had in view is to be found in the unbroken line of policy in reference to saline reservations from 1796 to the date of this act. To perpetuate this policy and apply it equally to all the lands of the three Territories (Kansas, Nebraska and New Mexico), was the controlling consideration for the incorporation of the section (4th Section, July 22, 1854—10 Stat., 308); and although the words of the section are loose and general, their meaning is plain enough when taken in connection with the previous legislation on the subject of salines. It cannot be supposed, without an express declaration to that effect, that Congress intended to permit the sale of salines in Territories soon to be organized into States, and thus subvert a long-established policy, by which it had been governed in similar cases.

In the case under consideration, it is not shown that any valuable deposit of salt is found upon the land in controversy, but said lands appear to be valuable only on account of said salt springs.

After a careful consideration of all the facts and the law in the case, I am clearly of the opinion that this office has no authority to dispose of said tracts either as agricultural or mineral lands, but that said salt springs, "with six sections adjoining and as contiguous as may be to each," should be reserved in order that the State of Colorado may be placed on an equal footing with other States in the matter of salt spring reservations.

The filings, therefore, made by C. L. Hall and by A. T. Litchfield *et al.*, are both rejected.

Secretary Chandler to the Commissioner of the General Land Office, February 13, 1877.

The reasons for your decisions are given at length, and are sufficient to justify the conclusions reached by you.

In addition to the reasons given, it may be proper to state that the spring in question is situated in that portion of Colorado included within the limits of the Louisiana purchase of 1803.

By the 10th section of the act of March 3, 1811, salt springs, and the lands contiguous thereto, were, by the direction of the President of the United States, to be reserved for future disposal of the States.

This policy of reservation has uniformly and consistenly been applied by the Government to said Territory, as well as the other territory of the United States.

The applicants are in no way protected by the proviso in section 11, of the act of March 3, 1875, providing for the admission of Colorado into the Union, viz: "That no salt spring or lands, the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall by this act be granted to said State."

No vested rights could be obtained by any individuals under the laws for the disposal of the public lands. The rights to be protected were those recognized by treaty stipulations, Morton *vs.* Nebraska (21 Wall. 660). [See Part IV.]

EAGLE SALT WORKS.

Salt is a mineral, and lands containing valuable deposits of salt are excepted from the grant to the Central Pacific Railroad Company.

The act of January 12, 1877, providing for the sale of saline lands, is not applicable to lands in the State of Nevada.

Commissioner Williamson to Register and Receiver, Carson City, Nevada, December 12, 1877.

On the 21st December, 1876, B. F. Leete and Charles H. Van Gorder filed in your office an application for patent for certain lands containing valuable deposits of salt, situated in Churchill county, Nevada, known as the Eagle Salt Works.

The notice was published in the Reno *Evening Gazette*, on the 26th December, 1876, and for the full period of time thereafter required by law.

It appears that on the 25th January, 1877, the Central Pacific Railroad Company filed a protest against this application for patent, upon the ground that said premises are within the grant to said company; that said lands are not mineral lands, but lands containing salt, and that they are not exempted from the operations of the grant of lands to said company.

Section 3 of the act of Congress approved July 1, 1862, (12th Statutes 489,) grants to said company every alternate section of public land within the limits of ten miles on each side of their road, "not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed, provided, that all mineral lands shall be excepted from the operations of this act."

This act was amended by act July 2, 1864, 13th Statutes, 356.

The fourth section of said amendatory act provides that the term "mineral land" whenever the same occurs in this act and the act to which this is an amendment, shall not be construed to include "coal and iron land," and also provides that said grant shall not include mineral lands.

From the foregoing it will be seen that *mineral lands* do not pass to said railroad company by virtue of its grant.

Salt is a mineral, and lands containing valuable deposits of salt were, as *mineral lands*, excluded from the operations of said grant.

It has been the general policy of the government since the inaugura-

tion of the land system by the act of 18th May, 1796, to *reserve saline* lands from disposition under the laws regulating the disposal of the public lands.

Section 2329 of the Revised Statutes of the United States, provides for the patenting of claims, usually called placers, "including all forms of deposits, excepting veins of quartz or other rock in place;" and under this section of the Revised Statutes, the land in question is alone subject to disposal.

The act of January 12, 1877, providing for the sale of saline lands, is not applicable to lands in the State of Nevada, as said act provides that the provisions of said laws shall not apply to any State or Territory which has not had a grant of salines by act of Congress, etc.

No grant of saline lands has been made to the State of Nevada.

It appears that the applicants base their title upon a location made by B. F. Leete and seven others. This location was made in accordance with the provisions of the act of the Legislature of the State of Nevada, approved February 24th, 1865, entitled "an act to provide for the location of lands containing salt."

In accordance with the requirements of said law, a survey was made of the premises claimed, and the field-notes and a plat of such survey were recorded in the county recorder's office of Churchill county, Nevada.

The initial point of the location survey is "the summit of a little mountain, known as Eagle Butte, situated 94.40 chains east of C. P. R. R."

This survey embraced twelve hundred and forty acres of land.

The survey accompanying the application for patent embraces twelve hundred and eighty acres.

Whether this survey embraces any part or portion of the premises located by B. F. Leete *et al.*, cannot be determined by an examination of the field notes and plats of the two surveys, as no reference is made in the survey accompanying the application to the initial point of the location survey.

The courses and distances do not agree in the two surveys, and each survey embraces tracts which are not included in the other.

Under these circumstances a re-survey will be required before patent can issue for this claim.

This re-survey will be so made as to embrace that portion of the premises described in the application for patent, which is included within the exterior boundaries of the premises located.

c. COAL LANDS.

SCHOOL SECTIONS IN WYOMING.

Commissioner Drummond to W. S. Foster, Rock Springs, Wyoming, July 30, 1873.

I am in receipt of your letter of April 6, 1873, wherein inquiry is made as to "how the new coal law affects school sections." Your question is understood to be whether the sections designated sixteen and thirty-six in each township within the limits of Wyoming Territory, which are found to contain valuable deposits of coal, are reserved for

school purposes, or can be sold as other coal lands, under the act of March 3, 1873.

Section 14 of the act approved July 25, 1868, providing for a temporary government for the Territory of Wyoming, makes no exception in reserving sections sixteen and thirty-six for school purposes in each township, and this office is therefore without authority of law for disposing of school sections within Wyoming Territory, except in cases where, after the passage of the act of March 3, 1873, the parties are found in actual occupancy of the lands at the date of survey.

NON-CONTIGUOUS TRACTS—UNION PACIFIC RAILROAD.

Commissioner Drummond to Register and Receiver, Cheyenne, Wyoming, August 11, 1873.

Section 4 of said act [July 2, 1864, granting lands to the Union Pacific R. R. Co.] expressly provides that "the term 'mineral land,' wherever the same occurs in this act and the act to which this is an amendment, shall not be construed to include coal and iron land," thus plainly including such land in the grant to the company whenever found upon the odd sections granted.

There was no law then in force for the disposal of these lands, except by public offering under the act passed the day previous, and no rights have been acquired under that act or the subsequent act of March 3, 1865.

The road was definitely located as early as 1868, and it follows that the United States had no rights to confer upon claimants by the passage of the act of March 3, 1873.

While the law limits each individual to one entry, and prohibits the holding of any other lands by one who has in any manner participated in the one entry allowed, it is *not* provided that the tract or tracts entered shall be in *compact form*, the only restriction being that of quantity, bounded by legal lines of subdivision.

FORM OF DECLARATORY STATEMENT AND PROOF BY CORPORATIONS.

Commissioner Drummond to Register and Receiver, Cheyenne, Wyoming, August 14, 1873.

When an incorporated company desires to apply for a patent for coal land under the act of March 3, 1873, the form of the declaratory statement should be in terms as follows, viz.:

The Wyoming Coal and Mining Company, a corporation consisting of four or more persons, organized under the general incorporation laws of the State of Nebraska, a copy of the certificate of incorporation being hereto attached, and having its principal office and place of business in Omaha, Nebraska, by its secretary and treasurer, Thomas Waddle, declares that, to the best of his knowledge and belief, each and every stockholder in said company is a citizen of the United States, or has declared his intention to become such; that no stockholder of said company, either as an individual or a member of any other association, incorporated or otherwise, has held or purchased any coal lands under the act approved March 3, 1873, entitled "An act to provide for the sale of lands of the United States containing coal;" and that it is the intention of said company to purchase, under the provisions of said act, the—quarter of section—, etc.

In case an incorporated company should file a D. S. under said act, it will be necessary for the secretary of the company to file his affidavit, setting forth, in full, the names of all the stockholders at the date of actual purchase. It will also be necessary for each stockholder to file an affidavit to the effect that he has never held or purchased any coal lands under the act approved March 3, 1873, entitled "An act to provide for the sale of the lands of the United States containing coal," either as an individual or as a member of an association. While the act of March 3, 1873, limits each individual to one entry, and prohibits the holding of any other coal lands by one who has in any manner participated in the one entry allowed, it is not provided that the tract or tracts entered shall be in compact form, the only restriction being that of quantity, bounded by legal lines of subdivision.

OREGON DONATION CLAIMS.

Commissioner Drummond to John Yoakum, Empire City, Oregon, March 28, 1874.

The act of 27th September, 1850, making donations to settlers in Oregon, expressly provides that "no mineral lands shall be located or granted under the provisions of this act."

In your letter you state that the land embraced by your claim is now "claimed as coal land." The first act of Congress regulating the disposal of coal lands, was that of July 1, 1864. Previous to that time land containing coal was not held to be excluded from sale under the acts of Congress regulating the disposal of agricultural lands, and parties whose rights were initiated under said act of 27th September, 1850, will be permitted to receive patents for their claims upon full compliance with the law and instructions, although coal may have been discovered upon the tracts claimed by them.

TOWN-SITES.

Coal land cannot be included in a town-site entry. Hearings may be had to determine the character of land in conflict.

Acting Commissioner Curtis to Alma Elridge, Coalville, Utah, April 21, 1874.

The town-site acts provide, among other things, that no title "shall be acquired to any valid mining claim or possession held under the existing laws of Congress" by virtue of the provisions of said town-site acts. Where land has been returned as "coal land" by the Surveyor-General, it cannot be entered as a town site until a hearing has been held to determine the character of land, viz.: whether it is mineral or agricultural in character. The coal-land law provides for the sale of land by *legal subdivisions only*, and hence it will be necessary to present evidence in regard to *each forty-acre tract* in controversy.

ADJOINING LAND.

Acting Commissioner Curtis to Hon. M. H. Dunnell, House of Representatives, May 25, 1874.

Parties owning coal mines have no authority under the law to follow their vein or coal bed under the land adjoining. Where land is known to contain valuable deposits of coal, it cannot be entered under the pre-emption or homestead acts.

SCHOOL SECTIONS IN CALIFORNIA.

Commissioner Burdett to Register and Receiver, Shasta, California, November 3, 1874.

The question is presented whether lands which are found upon survey to be designated as section sixteen or thirty-six pass to the State of California under the act of March 3, 1853, entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes," where the same contain valuable deposits of coal.

On the 23d April, 1873, the Hon. Secretary of the Interior, in case of the Keystone Consolidated Mining Company *et al. vs.* the State of California, decided "*that no mineral lands were granted by the act of* 1853."

It is true that the mining companies referred to in the Hon. Secretary's decision, above referred to, were claimants under the act of Congress, approved July 26, 1866, but the views therein expressed equally apply to claimants under the coal land law of March 3, 1873.

That lands containing valuable deposits of coal have been considered and treated as *mineral lands* is evident from the text of the act of July 1, 1864, entitled "An act for the disposal of coal lands and of town property in the public domain," viz.: "That where any tracts embracing coal beds or coal fields, constituting portions of the public domain, and *which as mines* are excluded from the pre-emption act of eighteen hundred and forty-one, and which under past legislation are not liable to ordinary private entry," etc.

Your decision is, therefore, reversed, and you will allow said applicants to file upon and make entry of said tracts, upon full compliance with the law and instructions.

SCHOOL SECTIONS IN COLORADO.

Commissioner Williamson to Register and Receiver, Denver, Colorado. March 30, 1877.

The question is presented whether lands which fall within sections 16 and 36, pass to the State of Colorado under the Act of Congress, approved March 3, 1875, 18 Stat. 474, entitled "An Act to enable the people of Colorado to form a Constitution and State Government; and for the admission of the said State into the Union on an equal footing with the original States," where the same contain valuable deposits of coal.

The 7th section of said Act provides "that sections numbered 16 and 36 in every township, and where such sections have been sold or otherwise disposed of by any Act of Congress, other land equivalent thereto, in legal subdivisions of not more than one quarter section, and as contiguous as may be, are hereby granted to said State for the support of common schools."

Section 15 of said act provides "That all mineral lands shall be excepted from the operation and grants of this Act."

The words "*mineral land*" as they occur in the several acts regulating the disposal of the public domain, are used in contra-distinction to the words "*agricultural land.*"

That lands containing valuable deposits of coal have been considered

and treated as *mineral lands* is evident from the text of the Act of July 1st, 1864, 13th Stat. 343, entitled "An Act for the disposal of coal lands and of town property in the public domain," viz.: "That where any tracts embracing coal beds or coal fields constituting portions of the public domain, and which as 'mines' are excluded from the pre-emption act of 1841, and which, under past legislation, are not liable to ordinary private entry," etc.

The Revised Statutes of the United States provide for the sale of coal lands under the general term "Mineral lands and Mining resources." Vide Title 32, Chapter 6, R. S.

The Hon. Secretary of the Interior, on the 7th of May, 1875, affirmed the decision of this office in case of James P. Hogden *et. al. vs.* The State of California, and held that mineral lands did not pass to the State of California under the Act of 3d of March, 1853, entitled "An Act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes," 10 Stat. 244, and that *coal lands are mineral lands.*

It is, therefore, held that sections 16 and 36 in the several townships do not pass to the State of Colorado under the Act of 3d March, 1875, if the same contain valuable deposits of coal.

TOWN-SITE OF COALVILLE.

Coal lands are mineral lands, and as such are excluded from the operation of the pre-emption and homestead laws.
A town-site patent does not pass title to any coal veins or beds.
Excepting clause in town-site and coal land patents when in conflict.

Commissioner Williamson to Register and Receiver, Salt Lake City, Utah, April 9, 1877.

On the 9th of January, 1874, the Township plat of T. 2 N., R. 5 E., Utah, was filed in your office.

On the 20th of May, 1874, John Spriggs filed in your office Coal D. S. No. 28 for the S. E. ¼ section 8, T. 2 N., R 5 E.

On the 20th of May, 1875, Samuel H. Levan filed Coal D. S. No. 86 for the S. E. ¼ section 8, T. 2 N., R. 5 E., and on the 13th of May, 1876, assigned and conveyed to James B. McKean his interest in the S. E. ¼ of S. E. ¼ of said section 8, and relinquished the remainder of the tract filed upon by him to the United States.

On the 20th of May, 1875, James H. Nounnan, as agent for David E. Buell, filed Coal D. S. No. 87, for the E. ½ of S. E. ¼ section 8, the N. E. ¼ of N. E. ¼ section 17, and the S. W. ¼ of S. W. ¼ section 9, T. 2 N., R. 5 E.

All the tracts embraced by said coal filings are included in D. S. 4116, made for the Town-site of Coalville.

On the 13th July, 1876, and following days, a hearing was held before you to determine the respective rights of the coal claimants.

In the sworn statement of John Spriggs, submitted at said hearing, he alleges that a vein of superior coal, ten to twelve feet in thickness, underlies the tracts embraced by D. S. No. 87; that he discovered the same about the year 1863, and immediately went into possession thereof; that he expended from twelve to fourteen thousand dollars in opening and developing said mine; that he remained in possession thereof until he sold an undivided one-half interest therein to D. E.

Buell and I. C. Bateman, who went into the exclusive possession and control thereof; that thereafter Buell and Bateman expended about twenty thousand dollars in the further development of said premises; that they continually worked and developed said mine, from the date of said sale until the spring of 1875; that continuously since the suspension of work thereon by Buell and Bateman, they have been in possession, and have had a man there to take care of the property; that neither S. H. Levan, who filed D. S. No. 86, nor his assignee, J. B. McKean, has been in possession of the premises described in D. S. No. 86, and that the only work done was that performed by a boy in two days; that there were but six to eight families in the place called Coalville, when he first laid claim to said coal land.

Wm. Lander, in his sworn statement, alleges that he has known said tracts since 1869; that John Spriggs was then in the possession of the same, and that Buell and Bateman have been in the possession thereof since 1871; that as the agent of Buell and Bateman he had charge of said mine from February, 1873, until the fall of 1874; that Buell and Bateman expended upon said mine from $30,000 to $40,000, in labor and improvements.

The testimony of Spriggs and Lander is corroborated by that of R. J. Redden, who alleges that he has known said land since Spriggs first went there.

J. H. Nounnan alleges under oath, that he, as agent, made said D. S. filing No. 87 for D. E. Buell and I. C. Bateman; that he has been acquainted with said land since 1868; that he was employed by Buell and Bateman as manager of said mine on the 5th September, 1871, and continued as such until the following year, again became the manager thereof for the lessees of Buell and Bateman in 1874, and continued in their possession till 1875, when he and his brother became the lessees thereof; that the vein of coal underlying said tracts is of a superior quality, and from eleven to thirteen feet thick; that about fifty thousand dollars have been expended in labor and improvements upon said mine by Buell and Bateman, and from eighteen to twenty thousand by Spriggs; that neither Levan nor McKean have done any work upon the S. E. ¼ of S. E. ¼ sec. 8, nor yet has either of them been in the possession of the same.

I. C. Bateman, in his sworn statement, alleges that Buell and affiant have been in the possession of said coal land since June 19, 1871; that Nounnan made filing of D. S. No. 87, as the agent of Buell and affiant; that they by themselves, or tenants, have been continuously in the possession of the tracts embraced by said D. S. No. 87 since the 13th of April, 1872, with the exception of a short time in 1875, when it was jumped; that in October, 1873, he, with his attorney, called upon the Surveyor-General of Utah, who informed them that the land was unsurveyed; that the Surveyor-General informed him that he did not know when the township would be surveyed, but thought not until the next summer; that thereupon he went to Europe, and on his return found that the township had been surveyed, and that the time allowed by law for making his filing had passed; that he would have secured this land during the time mentioned by law, had he not relied upon the information received from the Surveyor-General.

The statement of Mr. Bateman in regard to the interview with the

Surveyor-General is corroborated by the sworn statement of G. E. Whitney.

J. B. McKean in his sworn statement alleges that he was not at the date of the filing of D. S. No. 86 by his assignor, nor is he now, in the actual possession of any portion of said land; that he had placed no improvements thereon, and that he had no personal knowledge as to whether Levan had placed any thereon or not.

On the 13th, and again on the 19th of May, 1876, J. B. McKean tendered the payment for the S. E. ¼ of S. E. ¼ section 8 of said township, which you properly refused to receive. As before stated, the township plat was filed in the local office, January 9, 1874.

Section 2348, Revised Statutes of the United States, gives the preference right of purchase based on priority of possession and improvements.

Section 2349 requires a party to file his D. S. within sixty days from the filing of the township plat in the local office when the plat is not on file at the date of claimant's commencement of improvements, in order to have such preference right.

Section 2350 provides that upon the failure to file such D. S. within the prescribed time, the land shall be subject to entry by any other qualified applicant.

Neither D. S. 86 nor 87 was presented for filing within 60 days from the date of the filing of the township plat in the local office.

Both were however made on the same day, May 29, 1875. The one, No. 86, by a party who was not in the possession of the land and who never had been, and by a party who had made no improvements thereon of any kind. The other was made by a party who by himself, his co-owners and grantors, had been in the actual, continuous and exclusive possession of the premises claimed for a period of more than twelve years, and who had expended upon the claim in actual labor and improvements an amount of forty or fifty thousand dollars.

Good faith appears to have been exercised by the parties in interest in case of D. S. No. 87 in their endeavor to acquire title to property upon which they had expended large sums of money, and of which they had the actual possession.

The papers fail to establish the good faith of Levan or his assignee, McKean, and the forty acres in contest, to wit: the S. E. ¼ of S. E. ¼ section 8, T. 2 N., R. 5 E., is accordingly awarded to D. E. Buell under his said D. S.

This Declaratory Statement, No. 87, should be so amended as to include the names of the real owners of the land described therein.

The lands under consideration are within the limits of the grant to the Union Pacific R. R. Company.

On the application of the Mayor of Coalville to enter as a town-site the S. ½ of N. E. ¼, and the S. E. ¼ section 8, the S. ½ of N. W. ¼ and S. W. ¼ section 9, the E. ½ of N. E. ¼ section 14, and W. ½ of N. W. ¼ section 16, T. 2 N., R. 5 E. (D. S. 4116), on February 16, 1874, notice was issued to the U. P. R. R. Co., and on the 22d of May, 1874, a hearing was held to determine the respective rights of said town-site and said company to the tracts in dispute.

On the 9th August, 1876, a decision was rendered by this office awarding said tracts to the town-site as against said U. P. R. R. Co.

This decision was affirmed by the Hon. Secretary of the Interior, on the 10th February, 1877.

It will be observed that said coal D. S. No. 87 and said town-site application both include the E. ½ of S. E. ¼ of section 8, the S. W. ¼ of S. W. ¼ section 9, and the N. E. ¼ of N. E. ¼ section 17 in said township.

Section 2391, R. S., provides that no title shall be acquired by virtue of a town-site patent "to any mine of gold, silver, cinnabar or copper, or to any valid mining claim or possession held under existing laws."

Section 2386 R. S., provides that "when mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town-lots to be acquired shall be subject to such recognized possession and the necessary use thereof."

That lands containing valuable deposits of coal have been considered and treated as mineral land is evident from the text of the act approved July 1st, 1864, 13th Stat. 343, entitled "An Act for the disposal of coal lands and of town property in the public domain," viz.: "That where any tracts embracing coal beds or coal fields constituting portions of the public domain and which as 'mines' are excluded from the pre-emption act of eighteen hundred and forty-one, and which under past legislation are not liable to ordinary private entry," etc.

The Revised Statutes of the United States provide for the sale of coal lands under the general term "mineral lands and mining resources," *vide* Title 32, Chapter 6, R. S.

The Hon. Secretary of the Interior on the 7th May, 1876, affirmed the decision of this office in case of James P. Hogden *vs.* The State of California, and held that *coal lands are mineral lands.*

In accordance with the decision of this office of December 23, 1875, in case of the Town-site of Central City, Colorado, affirmed by the Hon. Secretary of the Interior, June 7, 1876, patent will issue upon said town-site application, which patent will contain the following proviso, viz.: "Provided, that no title shall be hereby acquired to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws; and provided further, that the grant hereby made is held and declared to be subject to all the conditions, limitations and restrictions contained in section two thousand three hundred and eighty-six of the Revised Statutes of the United States, so far as the same are applicable thereto."

The patent when issued upon said D. S. No. 87, will contain the following clause viz.; "Excepting and excluding, however, from these presents, all town property rights upon the surface, and there are hereby expressly excepted and excluded from the same all houses, buildings and structures, lots, blocks, streets, alleys, or other municipal improvements on the surface of the above described premises not belonging to the grantees herein, and all rights necessary or proper to the occupation, possession and enjoyment of the same."

By these correlative exceptions in said town-site and coal land patents, the rights of the town-site claimants and of the coal claimants will be fully protected.

DECLARATORY STATEMENT.

Acting Commissioner Lippincott to Register and Receiver, Olympia, Washington, January 21, 1876.

You will hereafter forward to this office, with coal land entries, under Section 2 of the act of March 3, 1873 (Section 2348 of the Revised Statutes), the original Declaratory Statements, retaining on your files copies thereof, if desired.

ONE ENTRY BUT TWO OR MORE FILINGS.

Commissioner Williamson to Register and Receiver, Salt Lake City, Utah, October 27, 1877.

In the case presented by you it appears that a Coal D. S. was filed September 19, 1874, by J. E. Hutchings, upon certain tracts in T. 13 S., R. 5 E.; that Mr. Hutchings expended about six hundred dollars in tunnelling and prospecting said tracts, and found them worthless as coal lands; that he abandoned and relinquished his filing, and now desires to file upon other tracts, upon which he has expended five hundred dollars.

It will be observed that the law authorizes but *one entry* by the same person or association of persons, and prohibits parties who have had the *benefit* of the provisions of the statute from entering or holding other tracts.

In the case under consideration no entry has been made by Mr. Hutchings, and it cannot be said that he has had the benefit of the act. You will, therefore, permit him to make his second filing upon full compliance with law and instructions.

You will be governed hereafter by the instructions herein contained, in similar cases.

Where parties have made coal filings and have failed to make entries of the tracts therein described within the time prescribed by law, they will be permitted to make entries thereof, provided no valid adverse rights shall have intervened, upon showing compliance with the other provisions of law.

CERTIFICATES OF DEPOSIT.

Section 2403 R. S. does not authorize certificates of deposit for surveys to be received in payment of coal lands.

Secretary Schurz to Commissioner Williamson, Sept. 22, 1877.

I have considered the case of Robert Sprowl, coal-land applicant, on appeal from your decision of January 31, 1877, refusing to allow him to make part payment for the S. E. ¼ section 4, Township 18 N., Range 6 E., Olympia, Washington Territory, with certificates of deposit for the survey of said township.

You held that the certificates of deposit, authorized by section 2403 of the Revised Statutes, to go in part payment for the lands authorized to be surveyed by section 2401, were receivable for agricultural lands, but not for coal lands, because the last named section says in express terms that *mineral* lands shall not be surveyed.

As coal lands have uniformly been treated by Congress, and by this Department, as mineral lands, I agree with your conclusion, that sec-

tion 2401 does not authorize them to be surveyed, and, as a consequence, section 2403 does not authorize the certificates of deposit to be received in payment.

Your decision is affirmed.

TIMBER CULTURE ENTRIES.

Commissioner Williamson to Samuel Landers, Russell, Kansas, October 14, 1878.

Coal lands are not subject to entry under the timber culture laws, and on receipt of affidavit that such lands have been embraced in a timber culture entry, steps will be taken to cancel the same.

PART IV.

JUDICIAL DECISIONS.

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a. IN FULL.

SUPREME COURT OF THE UNITED STATES.

NO. 998—OCTOBER TERM, 1878.

The Flagstaff Silver Mining Company of Utah (limited), Plaintiff in Error, *vs.* Helen Tarbet.	In error to the Supreme Court of the Territory of Utah.

A location of a mining claim upon a lode or vein of ore, should be laid along the same lengthwise of the course of its apex at or near the surface, as well under the mining act of 1866, as under that of 1872. If located otherwise, the location will only secure so much of the lode or vein as it actually covers.

Each locator is entitled to follow the dip of the lode or vein to an indefinite depth, though it carries him outside of the side lines of the location; but this right is based on the hypothesis that the side lines substantially correspond with the course of the lode or vein at the surface; and it is bounded at each end by the end lines of the location, crossing the lode or vein, and extended perpendicularly downwards, and indefinitely in their own direction.

A location laid crosswise of a lode or vein, so that its greatest length crosses the same instead of following the course thereof, will secure only so much of the vein as it actually crosses at the surface, and the side lines of the location will become the end lines thereof, for the purpose of defining the rights of the owners.

A locator working subterraneously into the dip of the vein belonging to another locator, who is in possession of his location, is a trespasser and liable to an action for taking ore therefrom.

Mr. Justice Bradley delivered the opinion of the Court.

This is a writ of error to the Supreme Court of the Territory of Utah. This was an action in the nature of trespass *quare clausum fregit* brought in the district court of the Territory of Utah for the third district by Alexander Tarbet, and continued by his assignee, Helen Tarbet, the defendant in error, against the plaintiff in error and other persons. The action being dismissed as to the other persons, judgment was rendered upon the verdict of a jury against the plaintiff in error for $45,000 damages. The company carried the case to the Supreme Court of the Territory, where the judgment was affirmed on the 3d day of June, 1878. The controversy relates to the working of a mine in Little Cottonwood mining district, in the county of Salt Lake, Territory of Utah. The defendant in error claims to own and to have been in possession of, a mining location on a lode called the Titus lode, the location including three claims and extending 600 feet westwardly from the dis-

covery, with a width of 200 feet, and including ten feet on the east side of the discovery belonging to the South Star mine. The plaintiffs in error owned and had a patent for another mining location called the Flagstaff mine, one hundred feet in width and 2,600 feet in length, running in a northerly and southerly direction, and crossing the Titus claims near the west end thereof, and nearly at right angles therewith. In working from the Flagstaff mine the plaintiffs in error worked around subterraneously, to a point some 300 feet to the east of their location, and on the north side of the Titus mine, and within about 100 feet of the Titus location. It is for this working that the suit was brought; and the principal question is, whether the plaintiffs in error had a right thus to work outside of their location on the east, and whether in doing so, they interfered with the rights of the defendant in error.

It is conceded that both parties are working on the same lode or vein of ore. The Flagstaff discovery to which the location of the plaintiffs in error relates as its starting point, is situated nearly due west from that of the South Star and Titus, and about 550 feet therefrom. The lode crops out at the two points of discovery, but is not visible at intermediate points. These croppings, however, show that the direction or course of the apex of the vein, at or near the surface, is nearly east and west. The location of the Titus, claimed by the defendant in error, nearly corresponds with this surface course of the vein. The location of the Flagstaff, belonging to the plaintiffs in error, crosses it nearly at right angles.

The principal difficulty in the case arises from the fact that the surface is not level, but rises up a mountain in going from the Titus discovery to the Flagstaff. The dip of the vein being northeasterly, it happens that by following a level beneath the surface, the strike of the vein runs in a northwesterly direction, or about north 50° west. In other words, if by a process of abrasion the mountain could be ground down to a plain, the strike of the vein would be northwest instead of west, as it now is on the surface; or, at least, as the evidence tended to show that it is. In that case the location of the defendant in error would leave the vein to its right, and the location of the plaintiffs in error would not reach it until several hundred feet to the north of the Flagstaff discovery.

Evidence being given pro and con in reference to the condition and situation of the vein, both at and below the surface, and to the workings thereon by both parties, the judge charged the jury as follows:

"If you find that Alexander Tarbet during the time mentioned in the complaint, to wit, from January 1, 1873, to December 14, 1875, (being a period of 2 years, 11 months, and 14 days), was in possession of the whole or an undivided interest of Nos. 1, 2 and 3 of the Titus mining claim, and ten feet of No. 1 of the South Star mining claim, holding the same in accordance with the mining laws and the customs of the miners of the mining district, and that the apex and course of the vein in dispute is within such surface; then, as against one subsequently entering, he is deemed to be possessed of the land within his boundaries to any depth, and also of the vein on the surface to any depth on its dip, though the vein in its dip downward passes the side line of the surface boundary, and extends beneath other and adjoining lands, and a trespass upon such part of the vein on its dip, though

beyond the side surface line, is unlawful to the same extent as a trespass on the vein inside of the surface boundary. This possession of the vein outside of the surface line, on its dip, is limited in two ways; by the length of the course of the vein within the surface; and, by an extension of the end lines of the surface claim vertically, and in their own direction, so as to intersect the vein on its dip; and the right of a possessor to recover for trespass on the vein is subject to only these restrictions."

Again—

"The defendant (plaintiff in error) has not shown any title or color of title to any part of the vein, except so much of its length on the course as lies within the Flagstaff surface, and the dip of the vein for that length; and it has shown no title, or color of title, to any of the surface of the South Star and Titus mining claim, except to so much of No. 3 as lies within the patented surface of the Flagstaff mining claim."

The court refused to give the following instructions, propounded by the plaintiffs in error, to wit:

"By the act of Congress of July 26th, 1866, under which all these locations are claimed to have been made, it was the vein or lode of mineral that was located and claimed; the lode was the principal thing, and the surface area was a mere incident for the convenient working of the lode; the patent granted the lode, as such, irrespective of the surface area, which an applicant was not bound to claim; it was his convenience for working the lode that controlled his location of the surface area; and the patentee under that act takes a fee-simple title to the lode, to the full extent located and claimed under said act."

Secondly—

"In the very nature of the thing, a lode or vein in its unworked and undeveloped stage cannot be known and surveyed so as to plat it and make a diagram of it; the law does not require impossibilities, and must receive a reasonable construction. The diagram required to be filed by the applicant for a patent under the act of 1866, was a diagram of the surface area claimed, and this diagram might be extended laterally and otherwise, as convenience in working this claim might suggest to the applicant."

These instructions and refusals to instruct indicate the general position taken by the court below, namely, that a mining claim secures only so much of a lode or vein as it covers along the course of the apex of the vein on or near the surface, no matter how far the location may extend in another direction.

The plaintiffs in error have made the following assignment of error, which indicates the position which they contend for:

"The plaintiff in error assigns for error the charge of the court and the refusal to give its request, that is, that the judge instructed the jury that the defendant below had shown no title or color of title to any part of the vein except so much of its length on its course as lies within the surface ground patented; and that he refused to direct the jury, that by the act of Congress it was the vein or lode of mineral that was located and claimed, and that the patent granted the lode irrespective of the surface area, which was merely for the convenience of working the lode; that the diagram required to be filed by an applicant for a

patent, was of the surface claimed, and might be extended laterally or otherwise, as convenience in working the claim might suggest: that the surface ground patented does not measure the grantee's right to the vein or lode in its course, or control the direction which he shall take; and, lastly, that the Flagstaff company have the right to the lode for the length thereof claimed in the location notice, though it runs in a different direction from that in which it was supposed to run at the time of the location."

Both parties agree in the general rule that the owner of a mining right in a lode or vein cannot follow the course of the vein beyond the end lines of his location extended perpendicularly downwards; but that he may follow the dip to an indefinite distance outside of his side lines. This is undoubtedly the general rule of miner's law, and the true construction of the act of Congress. The language of the act of 1866 (14 Stat., 251) in relation to "a vein or lode" is, "that no location hereafter made shall exceed two hundred feet in length *along the vein* for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to *any depth*, with *all its dips, variations, and angles*, together with a reasonable quantity of surface for the convenient working of the same as fixed by the local rules," etc. The act of 1872 is more explicit in its terms, but the intent is undoubtedly the same as it respects end lines and side lines, and the right to follow the dip outside of the latter. We think that the intent of both statutes is, that mining locations on lodes or veins shall be made thereon lengthwise, in the general direction of such veins or lodes on the surface of the earth where they are discoverable; and that the end lines are to cross the lode and extend perpendicularly downwards, and to be continued in their own direction either way horizontally; and that the right to follow the dip outside of the side lines is based on the hypothesis that the direction of these lines corresponds substantially with the course of the lode or vein at its apex on, or near the surface. It was not the intent of the law to allow a person to make his location cross-wise of a vein so that the side lines shall cross it and thereby give him the right to follow the strike of the vein outside of his side lines. That would subvert the whole system sought to be established by the law. If he does locate his claim in that way, his rights must be subordinated to the rights of those who have properly located on the lode. Their right to follow the dip outside of their side lines, cannot be interfered with by him. His right to the lode only extends to so much of the lode as his claim covers. If he has located cross-wise of the lode, and his claim is only one hundred feet wide, that one hundred feet is all he has a right to. This we consider to be the law as to locations on lodes or veins.

The location of the plaintiffs in error is thus laid across the Titus lode, that is to say, across the course of its apex, at or near the surface; and the side lines of their location are really the end lines of their claim, considering the direction or course of the lode at the surface.

As the law stands, we think that the right to follow the dip of the vein is bounded by the end lines of the claim properly so called, which lines are those which are cross-wise of the general course of the vein on the surface. The Spanish mining law confined the owner of a

mine to perpendicular lines on every side, but gave him greater or less width according to the dip of the vein. (See Rockwell, pp. 56–58; and see same book, pp. 274, 275.) But our laws have attempted to establish a rule by which each claim shall be so many feet of the vein, lengthwise of its course, to any depth below the surface, although laterally its inclination shall carry it ever so far from a perpendicular. This rule the court below strove to carry out, and all its rulings seem to have been in accordance with it.

The plaintiff in error contended, and requested the court to charge, in effect, that having received a patent for 2,600 feet in length, and 100 feet in breadth, commencing at the Flagstaff discovery, on the lode, at the surface, they were entitled to 2,600 feet of that lode, along its length, although it diverged from the location of their claim, and went off in another direction. We cannot think that this is the intent of the law. It would lead to inextricable confusion. Other locations correctly laid upon the lode, and coming up to that of the plaintiff in error on either side, would, by such a rule, be subverted and swept away. Slight deviations of the outcropping lode from the location of the claim would probably not affect the right of the locator to appropriate the continuous vein; but if it should make a material departure from his location, and run off in a different direction, and not return it, it certainly could not be said that the location was on that lode or vein farther than it continued substantially to correspond with it. Of what use would a location be, for any purpose of defining the rights of parties, if it could be thus made to cover a lode or vein which runs entirely away from it? Though it should happen that the locator, by sinking shafts to a considerable depth, might strike the same vein on its subterranean descent, he ought not to interfere with those who, having properly located along the vein, are pursuing their right to follow the dip in a regular way. So far as he can work upon it, and not interfere with their right, he might probably do so; but no farther. And this consequence would follow irrespective of the priority of the locations. It would depend on the question as to what part of the vein the respective locations properly cover and appropriate.

We do not mean to say that a vein must necessarily crop out upon the surface, in order that locations may be properly laid upon it. If it lies entirely beneath the surface, and the course of its apex can be ascertained by sinking shafts at different points, such shafts may be adopted as indicating the position and course of the vein, and locations may be properly made on the surface above it, so as to secure a right to the vein beneath. But where the vein does crop out along the surface, or is so slightly covered by foreign matter that the course of its apex can be ascertained by ordinary surface exploration, we think that the act of Congress requires that this course should be substantially followed in laying claims and locations upon it. Perhaps the law is not so perfect in this regard as it might be; perhaps the true course of a vein should correspond with its strike, or the line of a level run through it; but this can rarely be ascertained until considerable work has been done, and after claims and locations have become fixed. The most practicable rule is to regard the course of the vein as that which is indicated by surface outcrop, or surface explorations and workings. It is on this line that claims will naturally be laid, whatever be the character of the surface, whether level or inclined.

If these views are correct, the Titus claims belonging to the defendant in error, were located along the vein or lode in question in a proper manner, and the Flagstaff claims, belonging to the plaintiffs in error, were located across it, and can only give the latter a right to so much of the vein or lode as is included between their side lines. The court below took substantially this view of the subject, and ruled accordingly.

As this is really the whole controversy in the case, it is unneoessary to examine more minutely the different points of the charge, or the instructions asked for by the plaintiffs in error. The question was presented in different forms, but all to the same general purport.

The judgment of the court below is affirmed (8 Otto 463).

UNITED STATES CIRCUIT COURT, DISTRICT OF NEVADA, AUG. 22, 1877.

EUREKA CONSOLIDATED MINING COMPANY *vs.* RICHMOND MINING COMPANY OF NEVADA.

Vein and Lode Defined.—The terms "vein" and "lode" as used by miners, and in the mining acts of Congress, are applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock.

Objections to Patent to Mining Claim, When Made.—Under the mining acts of Congress, where one is seeking a patent for his mining location, and gives the prescribed notice, any other claimant of an unpatented location objecting to the patent on account of extent, or form, or because of asserted prior location, must come forward with his objections and present them, or he will be afterward precluded from objecting to the issue of the patent.

Doctrine of Relation not Applicable to Mining Patent.—The doctrine of "relation" cannot be applied so as to cut off the rights of the earlier patentee under a later location.

Same.—Silence of First Locator, a Waiver.—The silence of the first locator when a subsequent locator applies for a patent is, under the statute, a waiver of his priority.

Provision as to Parallel Lines, Directory—The provision of the statue of 1872, requiring the lines of each claim to be parallel to each other, is merely directory, and no consequence is attached to a deviation from its direction.

End Lines to Mining Claim Implied in Act of 1866.—"End lines," are not named in the act of 1866, but they are necessarily implied in it. By allowing a certain number of feet on a ledge, the mining law meant that a locator might follow his vein for that distance on the course of a ledge, and to any depth within that distance. (14 Stat. 251.)

Presumptions as to Official Duties.—The presumption of law is, that the officers charged with the supervision of applications for mining patents, do their duty. If, under any circumstances, a patent for a mining location, issued after the passage of the act of 1872, may be valid without the parallelism of lines required by that act, the law will presume that such circumstances existed.

Lode may be followed on Dip, not on Vein beyond End of Claim.—The patents allowed by these acts do not authorize the patentee to follow the vein outside of the end lines of the claim vertically drawn down through the lode; but authorize him to follow his vein with its dips, angles, and variations to any depth; though it may enter the land lying on the side of the claim. Lines drawn down vertically through the ledge or lode, at right angles with a line representing the course at the ends of the claimant's line of location, will carve out a section of the ledge or lode within which he is permitted to work, and out of which he cannot pass.

Mining Acts of 1866 and 1872 Construed.—The act of 1866 allowed so many lineal feet of the particular lode located and surface ground for the convenient working thereof. The act of 1872 granted certain surface-ground and the particular lode located, and all other lodes the top or apex of which lies within the surface lines, subject to the limitation that in following the lodes to any depth, the miner shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of his location. The act of 1872 in terms annexes this con-

dition to the possession not only of claims subsequently located, but to the possession of those previously located. (17 Stat. 91.)

Agreement Construed—Dividing Line follows Dip.—In the case of lode claims, a dividing line between them fixed by agreement, upon the surface at a given point, or for a given distance, must be extended along the dip of the lode, so far as that goes, and must necessarily divide all that the location on the surface carries, or it will not constitute a boundary between the claims. (5 Sawyer 121.)

This is an action for the possession of certain mining ground, particularly described in the complaint, situated in Eureka Mining District, in the County of Eureka, in the State of Nevada. The plaintiff is a corporation created under the laws of California, and the defendant, the Richmond Mining Company, is a corporation created under the laws of Nevada. The other defendants, Thomas Wren and Joseph Potts, are citizens of the latter state. The action was originally commenced in a state court of Nevada, but upon application of the plaintiff, and upon the ground of its incorporation in another state, and the presumed citizenship, from that fact, of its corporators or stockholders in that state, it was transferred to the Circuit Court of the United States. The complaint in the state court, in addition to the usual allegations of a declaration in ejectment, set forth various grounds upon which was based a prayer for an order restraining the defendants from working the premises in controversy pending the action. The defendants, in their answer to the complaint, not only denied the title of the plaintiff, but made various averments upon which a like restraining order against the plaintiff was asked. Both orders were granted. This union of a demand in ejectment for the property in controversy with a prayer for provisional equitable relief, is permitted by the system of procedure which obtains in the state, thus saving the parties the necessity of litigating in two suits what can as readily and less expensively be accomplished in one. But this union is not permitted in the Federal Courts; and upon the transfer of the present action, the pleadings of the plaintiff were amended by substituting a regular complaint in ejectment on the law side of the court; and a bill was filed for an injunction on its equity side. The defendants answered both, and also filed a cross-bill for an injunction against the plaintiff.

By arrangement of the parties, the defendants, Messrs. Wren and Potts, are dropped out of the controversy, and their names may be stricken from the pleadings. The claim for damages is also waived in this action, without prejudice to any future proceedings with respect to them. By stipulation, the case at law—the action of ejectment—is tried by the Court without the intervention of a jury, and the judges sit at San Francisco, instead of Carson, their finding and judgment to be entered in term time in the latter place, as though the case were heard and decided there. The testimony taken in the action at law is to be received as depositions in the equity suit, and both cases are to be disposed of at the same time, to the end that the whole controversy between the parties may be settled at once.

The premises in controversy are of great value, amounting by estimation to several hundred thousands of dollars, and the case has been prepared for trial with a care proportionate to this estimate of the value of the property; and the trial has been conducted by counsel on both sides with eminent ability.

Whatever could inform, instruct or enlighten the Court, has been

presented by them. Practical miners have given us their testimony as to the location and working of the mine. Men of science have explained to us how it was probable that nature in her processes had deposited the mineral where it is found. Models of glass have made the hill, where the mining ground lies, transparent, so that we have been able to trace the course of the veins, and see the chambers of ore found in its depths. For myself, after a somewhat extended judicial experience, covering now a period of nearly twenty years, I can say that I have seldom, if ever, seen a case involving the consideration of so many and varied particulars, more thoroughly prepared or more ably presented. And what has added a charm to the whole trial has been the conduct of counsel on both sides, who have appeared to assist each other in the development of the facts of the case, and have furnished an illustration of the truth that the highest courtesy is consistent with the most earnest contention.

The mining ground which forms the subject of controversy is situated in a hill known as Ruby Hill, a spur of Prospect Mountain, distant about two miles from the town of Eureka, in Nevada. Prospect Mountain is several miles in length, running in a northerly and southerly course. Adjoining its northerly end is this spur called Ruby Hill, which extends thence westerly, or in a southwesterly direction. Along and through this hill, for a distance slightly exceeding a mile, is a zone of limestone in which, at different places throughout its length, and in various forms, mineral is found, this mineral appearing sometimes in a series or succession of ore bodies more or less closely connected, sometimes in apparently isolated chambers, and at other times in what would seem to be scattered grains. And our principal inquiry is to ascertain the character of this zone, in order to determine whether it is to be treated as constituting one lode, or as embracing several lodes, as that term is used in the Acts of Congress of 1866 and 1872, under which the parties have acquired whatever rights they possess. In this inquiry, the first thing to be settled is the meaning of the term in those acts. This meaning being settled, the physical characteristics and the distinguishing features of the zone will be considered.

Those Acts give no definition of the term. They use it always in connection with the term vein. The Act of 1866 provided for the acquisition of a patent by any person or association of persons claiming "a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar or copper." The Act of 1872 speaks of veins or lodes of quartz or other rock in place, bearing similar metals or ores. Any definition of the term should, therefore, be sufficiently broad to embrace deposits of the several metals or ores here mentioned. In the construction of statutes, general terms must receive that interpretation which will include all the instances enumerated as comprehended by them. The definition of a lode given by geologists is that of a fissure in the earth's crust filled with mineral matter, or more accurately, as aggregations of mineral matter containing ores in fissures. (See Von Cotta's Treatise on Ore Deposits, Prime's Translation, 26.) But miners used the term before geologists attempted to give it a definition. One of the witnesses in this case, Dr. Raymond, who for many years was in the service of the General Government as Commissioner of Mining Statistics, and in that capacity had occasion to examine and report upon a large

number of mines in the States of Nevada and California, and the Territories of Utah and Colorado, says that he has been accustomed, as a mining engineer, to attach very little importance to those cases of classification of deposits which simply involve the referring of the subject back to verbal definitions in the books. The whole subject of the classification of mineral deposits, he states to be one in which the interests of the miner have entirely overridden the reasonings of the chemists and geologists. "The miners" to use his language, "made the definition first. As used by miners, before being defined by any authority, the term lode simply meant that formation by which the miner could be led or guided. It is an alteration of the verb lead; and whatever the miner could follow, expecting to find ore, was his lode. Some formation within which he could find ore, and out of which he could not expect to find ore, was his lode." The term lodestar, guiding star, or north star, he adds, is of the same origin. Cinnabar is not found in any fissure of the earth's crust, or in any lode as defined by geologists, yet the Acts of Congress speak, as already seen, of lodes of quartz, or rock in place, bearing cinnabar. Any definition of lode as there used, which did not embrace deposits of cinnabar, would be as defective as if it did not embrace deposits of gold or silver. The definition must apply to deposits of all the metals named, if it apply to a deposit of any one of them. Those Acts were not drawn by geologists, or for geologists; they were not framed in the interests of science, and consequently with scientific accuracy in the use of terms. They were framed for the protection of miners in the claims which they had located and developed, and should receive such a construction as will carry out this purpose. The use of the terms vein and lode in connection with each other in the Act of 1866, and their use in connection with the term ledge in the Act of 1872, would seem to indicate that it was the object of the legislator to avoid any limitation in the application of the Acts, which a scientific definition of any one of these terms might impose.

It is difficult to give any definition of the term as understood and used in the Acts of Congress, which will not be subject to criticism. A fissure in the earth's crust—an opening in its rocks and strata made by some force of nature, in which the mineral is deposited—would seem to be essential to the definition of a lode in the judgment of geologists. But to the practical miner, the fissure and its walls are only of importance as indicating the boundaries within which he may look for and reasonably expect to find the ore he seeks. A continuous body of mineralized rock lying within any other well-defined boundaries on the earth's surface and under it, would equally constitute in his eyes a lode. We are of opinion, therefore, that the term as used in the Acts of Congress is applicable to any zone or belt of mineralized rock lying with boundaries clearly separating it from the neighboring rock. It includes, to use the language cited by counsel, all deposits of mineral matter found through a mineralized zone or belt coming from the same source, impressed with the same forms, and appearing to have been created by the same processes.

Examining, now, with this definition in mind, the features of the zone which separate and distinguish it from the surrounding country, we experience little difficulty in determining its character. We find

that it is contained within clearly defined limits, and that it bears unmistakable marks of originating, in all its parts, under the influence of the same creative forces. It is bounded on the south side, for its whole length, at least so far as explorations have been made, by a wall of quartzite of several hundred feet in thickness; and on its north side, for a like extent, by a belt of clay, or shale, ranging in thickness from less than an inch to seventy or eighty feet. At the east end of the zone, in the Jackson mine, the quartzite and shale approach so closely as to be separated by a bare seam, less than an inch in width. From that point they diverge, until on the surface in the Eureka mine they are about 500 feet apart, and on the surface in the Richmond mine about 800 feet. The quartzite has a general dip to the north, at an angle of about 45 degrees, subject to some local variations, as the course changes. The clay or shale is more perpendicular, having a dip at an angle of about 80 degrees. At some depth under the surface, these two boundaries of the limestone, descending at their respective angles, may come together. In some of the levels worked, they are now only from two to three hundred feet apart.

The limestone found between these two limits—the wall of quartzite and the seam of clay or shale—has, at some period of the world's history, been subjected to some dynamic force of nature, by which it has been broken up, crushed, disintegrated, and fissured in all directions, so as to destroy, except in places of a few feet each, so far as explorations show, all traces of stratification; thus specially fitting it, according to the testimony of the men of science to whom we have listened, for the reception of the mineral which, in ages past, came up from the depths below in solution, and was deposited in it. Evidence that the whole mass of limestone has been, at some period, lifted up and moved along the quartzite, is found in the marks of attrition engraved on the rock. This broken, crushed and fissured condition prevades, to a greater or less extent, the whole body, showing that the same forces which operated upon a part, operated upon the whole, and at the same time. Wherever the quartzite is exposed, the marks of attrition appear. Below the quartzite no one has penetrated. Above the shale the rock has not been thus broken and crushed. Stratification exists there. If in some isolated places there is found evidence of disturbance, that disturbance has not been sufficient to affect the stratification. The broken, crushed and fissured condition of the limestone gives it a specific, individual character, by which it can be identified and separated from all other limestone in the vicinity.

In this zone of limestone numerous caves or chambers are found, further distinguishing it from the neighboring rock. The limestone being broken and crushed up as stated, the water from above readily penetrated into it, and operating as a solvent, formed these caves and chambers. No similar cavities are found in the rock beyond the shale, its hard and unbroken character not permitting, or at least opposing, such action from the water above.

Oxide of iron is also found in numerous places, throughout the zone, giving to the miner assurance that the metal he seeks is in its vicinity.

This broken, crushed and fissured condition of the limestone, the presence of the oxides of iron, the caves or chambers we have mentioned, with the wall of quartzite and seam of clay bounding it, give to

the zone, in the eyes of the practical miner, an individuality, a oneness, as complete as that which the most perfect lode in a geological sense ever possessed. Each of the characteristics named, though produced at a different period from the others, was undoubtedly caused by the same forces, operating at the same time, upon the whole body of the limestone.

Throughout this zone of limestone, as we have already stated, mineral is found in the numerous fissures of the rock. According to the opinions of all the scientific men who have been examined, this mineral was brought up in solution from the depths of the earth below, and would therefore naturally be very irregularly deposited in the fissures of the crushed matter, as these fissures are in every variety of form and size, and would also find its way in minute particles in the loose material of the rock. The evidence shows that it is sufficiently diffused to justify giving to the limestone the general designation of mineralized matter—metal-bearing rock. The three scientific experts produced by the plaintiff, Mr. Keyes, Mr. Raymond and Mr. Hunt, all of them of large experience and extensive attainments, and two of them of national reputation, have given it as their opinion, after examining the ground, that the zone of limestone between the quartzite and the shale constitutes one vein or lode, in the sense in which those terms are used by miners. Mr. Keyes, who for years was superintendent of the mine of the plaintiff, concludes a minute description of the character and developments of the ground, by stating that in his judgment, according to the customs of miners in this country and common sense, the whole of that space should be considered and accepted as a lead, lode, or ledge of metal-bearing rock in place.

Dr. Raymond, after giving a like extended account of the character of the ground, and his opinion as to the causes of its formation, and stating with great minuteness the observations he had made, concludes by announcing as his judgment, after carefully weighing all that he had seen, that the deposit between the quartzite and the shale is to be considered as a single vein in the sense in which the word is used by miners—that is, as a single ore deposit of identical origin, age and character throughout.

Dr. Hunt, after stating the result of his examination of the ground, and his theory as to the formation of the mine, gives his judgment as follows:

"My conclusion is this: that this whole mass of rock is impregnated with ore; that although the great mass of ore stretches for a long distance above horizontally and along an incline down the foot wall, as I have traced it, from this deposit you can also trace the ore into a succession of great cavities or bonanzas lying irregularly across the limestone, and into smaller caverns or chasms of the same sort; and that the whole mass of the limestone is irregularly impregnated with the ore. I use the word impregnated in the sense that it has penetrated here and there; little patches and stains, ore-vugs and caverns and spaces of all sizes and all shapes, irregularly disseminated through the mass. I conclude, therefore, that this great mass of ore is, in the proper sense of the word, a great lode, or a great vein, in the sense in which the word is used by miners; and that practically the only way of utilizing this deposit, is to treat the whole of it as one great ore-bearing lode or mass of rock."

This conclusion as to the zone constituting one lode of rock-bearing metal, it is true, is not adopted by the men of science produced as witnesses by the defendant, the Richmond Company. These latter gentlemen, like the others, have had a large experience in the examination of mines, and some of them have acquired a national reputation for their scientific attainments. No one questions their learning or ability, or the sincerity with which they have expressed their convictions. They agree with the plaintiffs' witnesses as to the existence of the mineralized zone of limestone with an underlying quartzite and an overlying shale; as to the broken and crushed condition of the limestone, and substantially as to the origin of the metal and its deposition in the rock. In nearly all other respects they disagree. In their judgment, the zone of limestone has no features of a lode. It has no continuous fissure, says Mr. King, to mark it as a lode. A lode, he adds, must have a foot-wall and a hanging-wall, and if it is broad, these must connect at both ends, and must connect downwards. Here there is no hanging-wall or foot-wall; the limestone only rests as a matter of stratigraphical fact on underlying quartzite, and the shale overlies it. And distinguishing the structure at Ruby Hill from the Comstock lode, the same witness says that the one is a series of sedimentary beds laid down in the ocean and turned up; the other is a fissure extending between two rocks.

The other witnesses of the defendant, so far as they have expressed any opinion as to what constitutes a lode, have agreed with the views of Mr. King. It is impossible not to perceive that these gentlemen at all times carried in their minds the scientific definition of the term as given by geologists—that a lode is a fissure in the earth's crust filled with mineral matter—and disregarded the broader, though less scientific definition of the miner, who applies the term to all zones or belts of metal-bearing rock lying within clearly-marked boundaries. For the reasons already stated, we are of the opinion that the acts of Congress use the term in the sense in which miners understand it.

If the scientific definition of a lode, as given by geologists, could be accepted as the only proper one in this case, the theory of distinct veins existing in distinct fissures of the limestone, would be not only plausible, but reasonable; for that definition is not met by the conditions in which the Eureka mineralized zone appears. But as that definition cannot be accepted, and the zone presents the case of a lode as that term is understood by miners, the theory of separate veins, as distinct and disconnected bodies of ore, falls to the ground. It is, therefore, of little consequence what name is given to the bodies of ore in the limestone; whether they be called pipe veins, rake veins or pipes of ore, or receive the new designation suggested by one of the witnesses, they are but parts of one greater deposit, which permeates, in a greater or less degree, with occasional intervening spaces of barren rock, the whole mass of limestone, from the Jackson mine to the Richmond inclusive.

The Acts of Congress of 1866 and 1872 dealt with a practical necessity of miners; they were passed to protect locations on veins or lodes, as miners understood those terms. Instances without number exist where the meaning of words in a statute has been enlarged or restricted, and qualified, to carry out the intention of the Legislature.

The inquiry, where any uncertainty exists, always is as to what the Legislature intended, and when that is ascertained it controls. In a recent case before the Supreme Court of the United States, singing birds were held not to be live animals, within the meaning of a Revenue Act of Congress. (*Reiche vs. Smythe*, 13 Wall. 162.) And in a previous case, arising upon the construction of the Oregon Donation Act of Congress, the term, a single man, was held to include in its meaning an unmarried woman. (*Silver vs. Ladd*, 7 Wall. 319.) If any one will examine the two decisions, reported as they are in Wallace's Reports, he will find good reasons for both of them.

Our judgment being that the limestone zone in Ruby Hill, in Eureka District, lying between the quartzite and the shale, constitutes, within the meaning of the Acts of Congress, one lode of rock bearing metal, we proceed to consider the rights conveyed to the parties by their respective patents from the United States. All these patents are founded upon previous locations, taken up and improved according to the customs and rules of miners in the district. Each patent is evidence of a perfected right in the patentee to the claim conveyed, the initiatory step for the acquisition of which was the original location. If the date of such location be stated in the instrument, or appear from the record of its entry in the local land office, the patent will take effect by relation as of that date, so far as may be necessary to cut off all intervening claimants, unless the prior right of the patentee, by virtue of his earlier location, has been lost by a failure to contest the claim of the intervening claimant, as provided in the Act of 1872. As in the system established for the alienation of the public lands, the patent is the consummation of a series of acts, having for their object the acquisition of the title, the general rule is to give to it an operation by relation at the date of the initiatory step, so far as may be necessary to protect the patentee against subsequent claimants to the same property. As was said by the Supreme Court in the case of *Shepley vs. Cowan*, (1st Otto 338,) where two parties are contending for the same property, the first in time, in the commencement of proceedings for the acquisition of the title, when the same are regularly followed up, is deemed to be the first in right.

But this principle has been qualified in its application to patents of mining ground by provisions in the Act of 1872, for the settlement of adverse claims before the issue of the patent. Under that act, when one is seeking a patent for his mining location, and gives proper notice of the fact as there prescribed, any other claimant of an unpatented location objecting to the patent of the claim, either on account of its extent or form, or because of asserted prior location, must come forward with his objections and present them, or he will afterwards be precluded from objecting to the issue of the patent. While, therefore, the general doctrine of relation applies to mining patents so as to cut off intervening claimants, if any there can be, deriving title from other sources, such perhaps as might arise from a subsequent location of school warrants or a subsequent purchase from the State, as in the case of *Heydenfeldt vs. Daney Gold Mining Company*, reported in the third of Otto, the doctrine cannot be applied so as to cut off the rights of the earlier patentee, under a later location, where no opposition to that location was made under the statute. The silence of the first locator is, under the statute, a waiver of his priority.

But from the view we take of the rights of the parties under their respective patents, and the locations upon which those patents were issued, the question of priority of location is of no practical consequence in the case.

The plaintiff is the patentee of several locations on the Ruby Hill lode, but for the purpose of this action it is only necessary to refer to three of them—the patents for the Champion, the At Last, and the Lupita or Margaret claims. The first of these patents was issued in 1872, the second in 1876, and the third in 1877. Within the end lines of the locations, as patented in all these cases, when drawn down vertically through the lode, the property in controversy falls. Objection is taken to the validity of the last two patents, because the end lines of the surface locations patented are not parallel, as required by the Act of 1872. But to this objection there are several obvious answers. In the first place it does not appear upon what locations the patents were issued. They may have been, and probably were, issued upon locations made under the Act of 1866, where such parallelism in the end lines of the surface locations was not required. The presumption of the law is, that the officers of the Executive Department specially charged with the supervision of applications for mining patents, and the issue of such patents, did their duty; and in an action of ejectment, mere surmises to the contrary will not be listened to. If under any possible circumstances, a patent for a location without such parallelism may be valid, the law will presume that such circumstances existed. A patent of the United States for land, whether agricultural or mineral, is something upon which its holder can rely for peace and security in his possessions. In its potency it is iron-clad against all mere speculative inferences. In the second place, the provision of the statute of 1872, requiring the lines of each claim to be parallel to each other, is merely directory, and no consequence is attached to a deviation from its direction. Its object is to secure parallel end lines drawn vertically down, and that was effected in these cases by taking the extreme points of the respective locations on the length of the lode. In the third place, the defect alleged does not concern the defendant, and no one but the Government has the right to complain.

The defendant, the Richmond Mining Company, also holds several patents issued to it upon different locations; but in this case it specially relies upon the patents of the Richmond and Tip Top claims. It is alleged that these patents were issued upon locations made earlier than any upon which the patents to the plaintiff were issued. Assuming this to be the fact, and claiming from it that the patents, by relation back to such locators, antedate in their operation the patents of the plaintiff, and the further fact that the locations were made under the Act of 1866, the defendant relies upon the facts assumed to defeat the pretensions of the plaintiff. It contends that inasmuch as the croppings of the vein it works are within the surface of its patented locations, it can follow the vein wherever it leads, though it be outside of the end lines of the locations when vertically drawn down through the lode. Its position is that whenever under the law of 1866, a location was made on a lode or vein, a right was acquired to follow the vein wherever it might lead, without regard to the end lines of the location. This position is urged with great persistence by one of the counsel of

the defendant, and with the ability which characterizes all his discussions.

The second section of the Act of 1866, upon the provisions of which this position is based, provides: "That whenever any person, or association of persons, claims a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to local customs or rules of miners in the district where the same is situated, and having expended, in actual labor and improvements thereon, an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy, or opposing claim, it shall and may be lawful for said claimant or association of claimants, to file in the local land office a diagram of the same, so extended, laterally or otherwise, as to conform to the local laws, customs and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode, with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition."

It will be seen by this section, that to entitle a party to a patent, his claim must have been occupied and improved according to the local customs or rules of miners of the district, and that his diagram of the same filed in the land office in its extension laterally or otherwise, must be in conformity with them.

The rules of the miners in the Eureka Mining District, adopted in 1865—laws of the district, as they are termed by the miners—provided that claims of mining ground should be made by posting a written notice on the claimant's ledge, defining its boundaries if possible; that each claim should consist of two hundred feet on the ledge, but claimants might consolidate their claims by locating in a common name, if in the aggregate no more ground was claimed than two hundred feet for each name, and that each locator should be entitled to all the dips, spurs and angles connecting with his ledge; and that a record of all claims should be made within ten days from the date of location. The rules also allowed claimants to hold one hundred feet each side of their ledge for mining and building purposes, but declared that they should not be entitled to any other ledge within this surface.

It will be perceived by these rules that they had reference entirely to locations of claims on ledges. It would seem that the miners of the district then supposed that the mineral in the district was only found in veins or ledges, and not in isolated deposits. In February, 1869, new rules were added to those previously passed, authorizing the location of such deposits. These new rules provided that each deposit claim should consist of one hundred feet square, and that the location should take all the mineral within the ground to any depth.

Under these rules square locations and linear locations were made by parties through whom the defendant derives title on what is called the Richmond ledge, and linear locations were made on what is called the Tip Top ledge, with surface locations for mining purposes, both parties claiming with their locations all dips, spurs and angles. It is only of the linear locations we have occasion to speak; it is under them that the defendant asserts title to the premises in controversy.

Now as neither the rules of miners in Eureka Mining District, nor

the act of 1866, in terms, speak of end lines to locations made on ledges, nor in terms impose any limitation upon miners following these veins wherever they may lead, it is contended that no such limitation can be considered as having existed and be enforced against the defendant. The act of 1866, it is said, recognizes the right of the locator to follow his vein outside of any end lines drawn vertically down, when it permits him to obtain a patent granting his mine, "together with the right to follow such vein or lode with its dips, angles and variations to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition."

It is true that end lines are not in terms named in the rules of the miners, but they are necessarily implied, and no reasonable construction can be given to them without such implication. What the miners meant by allowing a certain number of feet on a ledge was that each locator might follow his vein for that distance on the course of the ledge, and to any depth within that distance. So much of the ledge he was permitted to hold as lay within vertical planes drawn down through the end lines of his location, and could be measured anywhere by the feet on the surface. If this were not so, he might by the bend of his vein hold under the surface along the course of the ledge double and treble the amount he could take on the surface. Indeed, instead of being limited by the number of feet prescribed by the rules, he might in some cases oust all his neighbors, and take the whole ledge. No construction is permissible which would substantially defeat the limitation of quantity on a ledge, which was the most important provision in the whole system of rules.

Similar rules have been adopted in numerous mining districts, and the construction thus given has been uniformly and everywhere followed. We are confident that no other construction has ever been adopted in any mining district in California or Nevada. And the construction is one which the law would require in the absence of any construction by miners. If, for instance, the State were to-day to deed a block in the city of San Francisco to twenty persons, each to take twenty feet front, in a certain specified succession, each would have assigned to him by the law a section parallel with that of his neighbor, of twenty feet in width cut through the block. No other mode of division would carry out the grant.

The Act of 1866 in no respect enlarges the right of the claimant beyond that which the rules of the mining district gave him. The patent which the act allows him to obtain does not authorize him to go outside of the end lines of his claim, drawn down vertically through the ledge or lode. It only authorizes him to follow his vein, with its dips, angles and variations to any depth, although it may enter land adjoining, that is, land lying beyond the area included within his surface lines. It is land lying on the side of the claim, not on the ends of it, which may be entered. The land on the ends is reserved for other claimants to explore. It is true, as stated by the defendant, that the surface land taken up in connection with a linear location on the ledge or lode is, under the act of 1866, intended solely for the convenient working of the mine, and does not measure the miner's right, either to the linear feet upon its course, or to follow the dips, angles and variations of the vein, or control the direction he shall take. But the line

of location taken does measure the extent of the miner's right. That must be along the general course, or strike, as it is termed, of the ledge or lode. Lines drawn vertically down through the ledge or lode at right angles with a line representing this general course, at the ends of the claimant's line of location, will carve out, so to speak, a section of the ledge or lode, within which he is permitted to work, and out of which he cannot pass.

As the act of 1866 requires the applicant for a patent to file in the local office a diagram of his claim, such diagram must necessarily present something more than the mere linear location. It is intended that it should embrace the surface claimed for the working of the mine. In this way each of the patents of the parties embraces one or more acres and the fraction of an acre of surface ground, and some hundred linear feet on the lode.

The act of 1872 preserves to the miner the rights acquired under the Act of 1866, and confers upon him additional rights. Under the act of 1866, he could only hold one lode, or vein, although more than one appeared within the lines of his surface location. The surface ground was allowed him for the convenient working of the lode or vein located, and for no other purpose; it conferred no right to any other lode or vein. But the Act of 1872 alters the law in this respect; it grants to him the exclusive right of possession to a quantity of surface ground not exceeding a specified amount, and not only to the particular lode or vein located, but to all other veins, lodes and ledges, the top or apex of which lies within the surface lines of his location, with the right to follow such veins, lodes or ledges to any depth. But these additional rights are granted subject to the limitation that in following the veins, lodes or ledges, the miner shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of his location, and a further limitation upon his right in cases where two or more veins intersect or cross each other. The act in terms annexes these conditions to the possession, not only of claims subsequently located, but to the possession of those previously located. This fact, taken in connection with the reservation of all rights acquired under the Act of 1866, indicates that, in the opinion of the Legislature, no change was made in the rights of previous locators by confining their claims within the end lines. The act simply recognized a pre-existing rule, applied by miners to a single vein or lode of the locator, and made it applicable to all veins or lodes found within the surface lines.

Our opinion, therefore, is that both the defendant and the plaintiff, by virtue of their respective patents, whether issued upon locations under the Act of 1866, or under the Act of 1872, were limited to veins or lodes lying within planes drawn vertically downward through the end lines of their respective locations; and that each took the ores found within those planes at any depth in all veins or lodes, the apex or top of which lay within the surface lines of its locations.

The question of priority of location is, therefore, as already stated, of no practical importance in the case. This question can only be important where the lines of one patent overlap those of another patent. Here neither plaintiff nor defendant could pass outside of the end lines of its own locations, whether they were made before or after those upon

which the other party relies. And inasmuch as the ground in dispute lies within planes drawn vertically downward through the end lines of the plaintiff's patented locations, our conclusion is that the ground is the property of the plaintiff, and that judgment must be for its possession in its favor.

The same conclusion would be reached if we looked only to the agreement of the parties made on the 16th of June, 1873. At that time the plaintiff owned the patented claim called the Lookout claim, adjoining on the north the Richmond claim. The defendant had worked down from an incline in the Richmond and Tip Top into the ore under the surface lines of the Lookout patent. The plaintiff thereupon brought an action for the recovery of the ground and the ores taken from it. A compromise and settlement followed, which are contained in an agreement of that date, and were carried out by an exchange of deeds. A map or plat was made, showing the different claims held by the two parties. A line was drawn upon this map, on one side of which lay the Champion, the At Last and the Margaret claims, and on the other side lay the Richmond and the Lookout claims. By the agreement of the parties, the plaintiff, on the one hand, was to convey to the defendant the Lookout ground, and also all the mining ground lying on the northwesterly side of the line designated, with the ores, precious metals, veins, lodes, ledges, deposits, dips, spurs, or angles, on, in, or under the same, and to dismiss all pending actions against the defendant; and on the other hand, the defendant was to pay to the plaintiff the sum of $85,000, and to convey with warranty against its own acts, all its right, title or interest in and to all the mining ground situated in the Eureka Mining District, on the southeasterly side of the designated line, and in and to all ores, precious metals, veins, lodes, ledges, deposits, dips, spurs, or angles, on, in or under the same—"it being," says the agreement, "the object and intention of the said parties hereto to confine the workings of the party of the second part (The Richmond Mining Company) to the northwesterly side of the said line continued downward to the centre of the earth, which line is hereby agreed upon as the permanent boundary line between the claims of the said parties."

The deeds executed between the parties the same day were in accordance with this agreement. The deed of the Richmond Mining Company to the plaintiff, conveyed all the mining ground lying on the south-easterly side of the designated line, "together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed."

The line thus designated, extended down in a direct line along the dip of the lode, would cut the Potts chamber, and give the ground in dispute to the plaintiff. That it must be so extended, necessarily follows from the character of some of the claims it divides. As the Richmond and the Champion were vein or lode claims, a line dividing them must be extended along the dip of the vein or lode, so far as that goes, or it will not constitute a boundary between them. All lines dividing claims upon veins or lodes necessarily divide all that the location on the surface carries, and would not serve as a boundary between

them if such were not the case. The plaintiff would therefore be the owner of the ground in dispute by the deed of the defendant, even if it could not assert such ownership solely upon its patented locations. Our finding therefore is for the plaintiff, and judgment must be entered thereon in its favor for the possession of the premises in controversy.

FIELD, *Presiding Justice.*
SAWYER, *Circuit Judge.*
HILLYER, *District Judge.*

SUPREME COURT OF THE UNITED STATES.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF MONTANA.

CAMPBELL *vs.* RANKIN.

1. An affidavit for the continuance of a cause does not become a part of the record, so that effect can be given to it during the trial, unless it is properly introduced as evidence for some legitimate purpose by one of the parties.
2. In trespass *quare clausum fregit*, actual possession of the land by the plaintiff is sufficient evidence of title to authorize a recovery against a mere trespasser.
3. The judgment of a court of competent jurisdiction, is, as to every issue decided in the suit, conclusive upon the parties thereto, and in a subsequent suit between them parol evidence, whenever it becomes necessary in order to show what was tried in the first suit, is admissible.
4. While the record of a mining district is the best evidence of the rules and customs governing its mining interests, it is not the best or the only evidence of the priority or extent of a party's actual possession.
5. The fifth section of the act entitled "An Act to promote the development of the mining resources of the United States," approved May 10, 1872 (17 Stat., 91), gives no greater effect to the record of mining claims than is given to the records kept pursuant to the registration laws of the respective States, and does not exclude as *prima facie* evidence of title, proof of actual possession, and of its extent.

MR. JUSTICE MILLER delivered the opinion of the court. The declaration avers that plaintiffs below, who are also plaintiffs in error, were the owners of a mining claim in Meagher county, known as claim No. 2 below discovery, in Green Horn Gulch, and that defendant wrongfully entered upon and took possession of a portion of said claim, and took and carried away large quantities of gold-bearing earth and gold dust, the property of plaintiffs, of the value of $15,000.

The answer amounts to a general denial of all the averments of the complaint.

Bills of exception taken on the trial show that plaintiffs offered in evidence the record of a judgment in the same court, in which the defendant in this suit was plaintiff, and the present plaintiffs and those under whom they claim were defendants, which was an action for trespass, wherein the same question of conflicting interference of the two mining claims was in issue, and the verdict and judgment were for plaintiffs in this suit.

The admission of this record was objected to, and the court sustained the objection.

Plaintiffs then offered to prove that they had been in actual possession of claim No. 2, in Green Horn Gulch, for several years, and that defendants had admitted in conversation the existence of such claim, and had conceded a dividing line between his claim and that of plaintiffs, which would give to the latter the ground in controversy. The court refused this also.

Plaintiffs then offered in evidence a deed from Harding and Wilson

for Claim No. 2, Green Horn Gulch, dated December, 1869, and proof of occupancy and use of it ever since. The court rejected this also; and having rejected all the evidence offered by plaintiffs, it directed the jury to find for defendant, and on that verdict rendered a judgment, which was affirmed on appeal by the Supreme Court of the Territory. The record sufficiently shows that neither party to this suit had any legal right to the *locus in quo* from the United States, and that the controversy involves only such possessory right as the act of Congress recognizes in the locator and occupant of a mining privilege. Since this right of possession was the matter to be decided by the jury, it is almost incomprehensible that proof of prior occupancy, and especially when accompanied by a deed showing color of right, should be rejected.

In actions of ejectment, or trespass *quare clausum fregit*, possession by the plaintiff at the time of eviction has always been held *prima facie* evidence of the legal title, and as against a mere trespasser it is sufficient. (2 Greenl. Ev., sec. 311). If this be the law, when the right of recovery depends on the strict legal title in the plaintiff, how much more appropriate is it as evidence of the superior right of possession under the acts of Congress which respect such possession among miners.

If this plain principle of the common law needed support from adjudged cases, as applicable to the one before us, it may be found in the courts of California, in *Atwood vs. Fricot*, 17 *Cal.* 37; *English vs. Johnson*, 17 *Cal.* 107, *and Hess vs. Winder*, 30 *Cal.* 355.

The court below erred, therefore, in rejecting this evidence of plaintiffs' prior possession.

Whatever may have been the opinion of other courts, it has been the doctrine of this court in regard to suits on contract ever since the case of the *Washington, Alexandria and Georgetown Steam Packet Co. vs. Sickles*, (24 Howard 333), and in regard to actions affecting real estate, since *Miles vs. Caldwell* (2 Wall. 35), that whenever the same question has been in issue and tried, and judgment rendered, it is conclusive of the issue so decided in any subsequent suit between the same parties; and also that where, from the nature of the pleadings, it would be left in doubt on what precise issue the verdict or judgment was rendered, it is competent to ascertain this by parol evidence on the second trial. The latest expression of the doctrine is found in *Cromwell vs. County of Sac* (94 U. S. 351); *Davis vs. Brown* (94 U. S. 423.)

The rejection of the record of the suit of *Rankin vs. Campbell and others*, was in direct conflict with this doctrine. In that case Rankin had brought an action of the same character as the one he is now defending, against the parties who are now plaintiffs, and had a verdict and judgment against him. The record in that case, as in this, shows that one party claimed under Mining Claim No. 2, in Green Horn Gulch, and the other under Mining Claim No. 8, in Confederate Gulch. The issue in both cases was to which claim did the disputed piece of mineral deposit belong; and if that issue was not clear, it was competent, under the decisions we have cited, to show by parol proof that the controversy was over the same locality, and that the issue had, therefore, been decided against Rankin.

And this proof the plaintiffs offered, in connection with the record of the former suit. The exclusion of this evidence was error.

The principal ground on which the court rejected all this evidence, and all other evidence offered by the plaintiffs, is, that at the same term of the court, and before the trial, one of the plaintiffs, in support of an application for a continuance, made an affidavit, in which he stated that he expected to prove by an absent witness that he had destroyed the original record and laws of Green Horn Gulch, in which the plaintiffs' claim is located; that said records and laws established the size, lines, boundaries and location of claim No. 2 below discovery in said gulch, and that said records showed that the predecessors of the plaintiffs in interest possessed and occupied this claim, in accordance with the local rules.

This affidavit, made in support of an application for continuance, which was overruled, the judge, of his own motion, treated as part of the record, and as before him on the trial, though not offered by either party; and, as well as we can understand it, excluded all other evidence of the possession, and location and validity of the plaintiffs' claim, because this lost record was the best evidence, and all other was secondary or inferior.

It is difficult to argue this proposition seriously. The affidavit was in no judicial sense before the court on the trial, and could only be used, if at all, when introduced by one of the parties for some legitimate purpose. If it had been so presented by the defendant, it plainly showed that this better evidence was destroyed and could not be produced, and was a sufficient foundation for the use of secondary evidence.

But the local record of a mining community, while it may be, and probably is, the best evidence of the rules and customs governing the community, and, to some extent, the distribution of mining rights, is not the best, nor the only evidence of priority or extent of actual possession. It may fix limits to individual acquisition, the terms and rules for acquiring and transferring mining rights, as the laws of the State do in regard to ordinary property; but such rules and customs no more determine who was the first locator, or where he located, than any other competent evidence of that fact.

Whatever may be the effect given to the record of mining claims under Section of the Act of Congress, approved May 10, 1872 (17 Stat. 92), it certainly cannot be greater than that which is given to the registration laws of the States; and they have never been held to exclude parol proof of actual possession and the extent of that possession as *prima facie* evidence of title.

The Supreme Court of the Territory argue that the trial court can regulate the order of admission of evidence in a case, and because the plaintiffs did not introduce first of all proof of their mining records which were lost, nothing else could be introduced. For want of these, evidence of actual possession, of title-deeds, of the location of the claim, and the record of the former suit determining the rights of the parties to the *locus in quo*, were all unavailing and inadmissible.

We know of no rule of law which justifies this action.

The judgment of the Supreme Court of Montana will be reversed, and the cause remanded to that court with directions to order a new trial; and it is so ordered. (9 Otto, 261.)

UNITED STATES CIRCUIT COURT—DISTRICT OF COLORADO.

The Leadville Mining Company *vs.* Fitzgerald. (Carbonate *vs.* Little Giant.)	Stevens & Leiter, *vs.* Murphy. (Iron *vs.* Louella.)

EXTRACTS FROM JUDGE HALLETT'S DECISION.

"Until the discovery of mineral deposits near Leadville, no controversy had arisen in this State as to whether a lode or vein is in place within the meaning of the act of Congress. The mines opened in Clear Creek, Gilpin, Boulder, and other counties, descend into the earth so directly that no question could arise as to whether they were inclosed in the general mass of the country. Whatever the character of the vein and whatever its width, it was sure to be within the general mass of the mountain. But the Leadville deposits were found to be of a different character. In some of them, at least, the ore was found on the surface, or covered only by the superficial mass of slide, *débris*, detritus, or movable stuff, which is distinguishable from the general mass of the mountain, while others were found beneath an overlying mass of fixed and immovable rock, which could be called a wall as well as that which was found below them. It then became necessary to consider very carefully the meaning of the words, 'in place,' in the act of Congress, in order to determine whether these deposits were of the character described in that act. Section 2320, of the Revised Statutes, refers to veins and lodes in 'rock in place,' and of course no other can be brought within the terms of the act. After careful consideration, it was thought that *a vein or lode could not be in place within the meaning of the act, unless it should be within the general mass of the mountain; it must be inclosed by or held within the general mass of fixed and immovable rock.* It is not enough to find the vein or lode lying on the top of fixed or immovable rock, for that which is on top is not within, and that which is without the rock in place can not be said to be within it. * * *

"As to what was said by counsel with reference to the position of the vein or lode, I am still of the opinion that, *if it descends from the plane of the horizon, it is to be regarded as a departure from the perpendicular. It is conceded that if the vein be exactly upon the plane of the horizon, it is not within the act.* In every position, however, from the horizontal to the perpendicular, it must be said that it has departed from the perpendicular. And here, if the evidence is to be believed, the lode is somewhat below the plane of the horizon, and so within the meaning of the act, as one which may be pursued beyond the side lines of the claim in which its outcrop may be found.

UNITED STATES CIRCUIT—DISTRICT OF COLORADO.

TABOR *vs.* DEXTER.

New Discovery *vs.* Little Chief.

Opinion by Hallett, J.

This is a bill for an injunction by parties owning the New Discovery lode, in California Mining District, against the owners of an adjoining claim called the Little Chief. It is not alleged that the defendants

have entered upon or into the New Discovery ground, or that they have in any way interfered with plaintiff's possession within the limits of the New Discovery location. The charge is that plaintiff's lode descends into the Little Chief's ground on its dip, and that defendants are there mining and exhausting the ore. In other words, plaintiffs contend that the top of the lode is in their ground, and that they have the right to follow upon its downward course into and through adjoining territory. To maintain this position it is necessary to show that the lode is *in place*, within the meaning of section 2320, Revised Statutes of the United States. And this depends upon the position of the ore or vein matter in the earth, as whether the inclosing mass is fixed and immovable, more than upon the character of the ore itself. Whether the ore is loose and friable, or very hard, if the enclosing walls are country rock, it may be located as a vein or lode. *But if the ore is on top of the ground, or has no other covering than the superficial deposit, which is called alluvium, diluvium, drift or debris, it is not a lode or vein within the meaning of the Act, which may be followed beyond the lines of the location.* In this bill it is alleged that the overlying material is boulders and gravel, which cannot be *in place* as required by the Act. Not much is known to the court of the deposits on Fryer Hill, but it would seem, from the allegations in this bill, that they differ materially from the Iron mine, which has a hanging wall as well as a foot wall. For the decision of this motion it is enough to say that, where the mass overlying the ore is mere drift, or a loose deposit, the ore is not in place within the meaning of the Act. Upon principles recently explained, a location on such a deposit of ore may be sufficient to hold all that lies within the lines, but it cannot give a right to ore in other territory, although the ore body may extend beyond the lines. The motion will be denied.

UNITED STATES CIRCUIT COURT, DISTRICT OF NEVADA, NOVEMBER 8, 1876.

THE 420 MINING COMPANY *vs.* THE BULLION MINING COMPANY.

Patent to Mining Claims.—Who entitled to.—Under the Act of Congress of 1866 (14 *Stats.*, 251). The right to purchase a mining claim to a gold or silver bearing lode and to receive a patent therefor from the United States, was granted to the person, or association of persons, who in pursuance of the law of the State or Territory, and the mining customs, rules and regulations of the place embracing the location, recognized and enforced by the courts, is the owner, and entitled to the possession, as against everybody except the United States.

Pre-emption.—The right given is simply a right of purchase, and is in the nature of a pre-emption right, founded upon like principles as the pre-emption laws; and not a right similar or analogous to that of a grantee under an inchoate or imperfect Mexican grant.

Defenses in Abatement and on Merits.—Under the statute of Nevada, authorizing the defendant to set up in his answer as many defences as he has, if an answer contains a defence which only goes to defeat the present action and other defences on the merits, and the issues as to both are in fact found for defendant, but the judgment is apparently entered for defendant upon the finding upon the merits, the matter upon the merits will be *res adjudicata*, and the parties will be estopped from further litigating the merits, even though the issue of the matter of abatement is also found in favor of defendant, and the judgment might have been rested on that issue.

Same.—In such case, where all the issues are in fact especially found in favor of the defendant, and judgment entered thereon generally, without any provision that it

shall be without prejudice, or without any other limitation or restriction, the estoppel will extend to every matter of fact in issue and in fact found by the court in favor of the defendant.

Several Defences in Same Answer.—Where the statute authorizes the defendant to set up in the same answer as many defences as he has, and several defences are set up, and it is competent for the court to determine them all without reference to the character of the different defences, and where all are in fact determined, the determination as to all will be conclusive between the parties.

Estoppels Mutual.—When the finding and judgment in the given case are conclusive on both parties if conclusive on one, the estoppel is mutual within the meaning of the rule requiring estoppels to be mutual.

Judgment Technically Correct Reversed.—Where a judgment is broader in its scope and more advantageous to a party than he is entitled to have, it will be reversed and modified, although upon the record it appears to be technically correct.

Same.—A judgment which would operate as an estoppel upon points that manifestly ought not to be concluded will be reversed, although there is no technical error shown by the record.

Partial New Trial.—A new trial may be granted under the practice of Nevada, upon some issues, without disturbing the findings upon other issues, and in such cases the judgment would not necessarily be reversed if the remaining findings not vacated are sufficient to sustain the judgment; the judgment in such case may be reversed, modified or affirmed, as justice may require, but there would be no estoppel as to the matter embraced in the finding vacated.

Statutes of Limitations and Mining Claims.—The statute of limitations of Nevada relating to mining claims, constitutes a part of the local laws by which the rights of parties are to be determined for the purpose of ascertaining who is entitled to purchase a part of the mineral lode under the act of July 26, 1866.

Parol Partition.—A parol partition executed by the parties taking actual exclusive possession of the portions respectively assigned to them in pursuance of the agreement to partition, which possession and partition are acquiesced in by the parties, is valid, and upon such a partition the parties ceased to be tenants in common.

Tenants in Common Ouster.—One tenant in common may oust his co-tenant, and claim adversely, thereby setting the statute of limitations in motion, and from the time of such actual ouster and adverse possession, they deal at arm's length, and there is no longer any relation of trust or confidence between them.

Title under Statutes of Limitations—Adverse possession for the time limited by statutes of limitations not only bars of remedy, but extinguishes the right, and vests a perfect title in the adverse holder.

Same—Title Quieted—A title acquired under a statute of limitation will be quieted in the adverse holder on a bill in equity filed for that purpose, even against the holder of the paper title barred.

Before Sawyer, Circuit Judge. Demurrer to bill in equity.

The facts as alleged in the bill, are as follows:

On June 23, 1859, John Cosser and Walter Cosser, under the firm name of Cosser & Co., J. Morris, J. Durgan, Thomas Winters, V. A. Houseworth, C. True, J. Powell and A. Ricard, located and appropriated, in the manner prescribed by the mining rules, on the Comstock lode, a mining claim of 1,600 feet in length on the lode; took possession of the same, and thereby as tenants in common, became the owners of said claim, as against all the world except the United States. In July, 1859, the said parties, while still in possession, by a verbal agreement, to which all assented, agreed that said mining claim should be segregated into two parts, and that said Durgan, Morris, Powell, Ricard and True should thenceforth, as tenants in common, own and possess exclusively the portion of said claim and lode extending from its northern boundary southerly a distance of 420 feet, and should release all their interest in the other portion of said claim and lode to said Winters, Cosser & Co., and Houseworth, who should own and possess

in the same manner said southern portion of said claim and lode, and release to said first-named parties all their interest in said northern portion of 420 feet. In pursuance of said agreement a monument was placed to make the division line, and the parties took possession of their respective portions—Durgan and his associates taking possession of the northern part, and Winters and his associates of the southern part, and thenceforth each of said parties and their successors in interest exclusively held possession and improved the part so allotted to them in accordance with the mining rules and regulations, and claimed no interest in the other portions of said claim or lode.

No written conveyance was ever made in pursuance of said agreement, and no demand for one was ever made, except the demand for the purposes of this action. All the right, title and interest of said Durgan and his associates in said north 420 feet of said lode were subsequently, by sundry mesne conveyances conveyed to the complainant, a corporation organized under the laws of Nevada. Between the segregation, as aforesaid, and January 1, 1864, said Durgan and associates had spent, in prospecting and developing said mine, not less than $30,000, and since the latter date the 420 Mining Company have for like purposes spent an additional sum of $30,000. The Bullion Mining Company, a corporation organized under the laws of California, has since acquired all the right, title and interest of said Winters and his associates in the southern portion of said lode, and has since held the same in accordance with the mining rules and regulations. On November 16, 1868, the Bullion Mining Company commenced an action in the proper court against the 420 Mining Company, to recover said northern 420 feet of said lode, alleging title in plaintiff and wrongful possession and withholding by defendant. Defendant answered, admitting possession by defendant, but denying that the possession was wrongful. This action was voluntarily dismissed on plaintiff's motion without trial, on June 3, 1872, without notice to the defendant to the action. On November 6, 1868, while the 420 Mining Company is alleged to have been in possession of said Northern 420 feet of said lode, the Bullion Mining Company applied at the proper land office for a patent, embracing the whole of said claim, both the southern part and said northern 420 feet conveyed to the 420 Mining Company, being the part now in controversy under the act of Congress, entitled, "An act to grant the right of way to ditch and canal owners, and for other purposes," approved July 26, 1866, and in pursuance of such application a patent, embracing the whole of said claim on the Comstock lode, was issued in due form to said Bullion Mining Company, on March 26, 1875.

It is alleged in the bill that the said application for a patent was based solely on the said location made June 23, 1859, and that the only pretence of title to said part in controversy is a conveyance to the Bullion Mining Company of their interest therein by said Durgan and his associates, made subsequently to the said conveyance by the same parties to the 420 Mining Company, with a knowledge at the time on the part of the Bullion Mining Company of the prior conveyance to the 420 Mining Company. On November 30, 1872, the 420 Mining Company commenced an action in the proper court in the State of Nevada against the Bullion Mining Company, to determine

the adverse right of the latter company to said 420 feet of said lode, which action was duly tried and a judgment therein duly entered, and a copy of the record in that suit is annexed to, and made a part of the bill of complaint in the present action.

It is further alleged that by reason of the issue of the patent, as aforesaid, the legal title to said northern 420 feet of said lode became wrongfully vested in the defendant; but that by reason of the facts alleged the complainant was really the owner of said 420 feet of mining ground, and entitled under said act of Congress to the patent therefor. The bill thereupon prays that the complainant be decreed to be entitled to said mining ground; that the defendant holds the legal title in trust for complainant, and that it may be required to convey said 420 feet of said lode to complainant.

The complaint in the record of the said action of the 420 Mining Company, against the Bullion Mining Company, to determine the adverse claim of the latter, attached to, and made a part of the bill, alleges that the 420 Mining Company complainant therein is "the owner of, in possession of, and entitled to the possession of, the said 420 feet of the Comstock lode now in controversy;" that the Bullion Mining Company defendant therein "claims an estate or interest therein adverse to the plaintiff," and denies the validity of such adverse claim. It then sets out the commencement of the said former action by defendant against complainant to recover possession of said 420 feet; the answer of defendant denying the right; the application of defendant in this action for a patent; the filing of protest by complainant; the subsequent dismissal of the action to recover possession by complainant in that action (defendant in this) without notice to the defendant therein that the right has never been determined between the parties; and praying that the Bullion Mining Company, defendant, may be required to set forth its claim; that the right of the parties be determined by the court; and that the defendant, the Bullion Mining Company, be adjudged not to have any estate or interest in the said mining ground, etc. The answer to said complaint denies the ownership of the complainant, its right of possession, and its actual possession, of said 420 feet or any part thereof, at the time of the commencement of the action. It denies that the defendant's claim is without right and then affirmatively avers that "at the date of the commencement of this action, and for a long time prior thereto, it was and still is the owner of, and in possession of, and entitled to the possession of, said mining ground, ledge or lode, and every part thereof." It then alleges affirmatively, in appropriate terms, an adverse possession in the defendant of the said 420 feet of the Comstock lode for a period exceeding the time required to give a title under the statute of limitations of Nevada in cases of mining claims; and that during all of said time the defendant had held and worked such claim in the manner required by the laws and customs in force in the district in respect to such claim; and then also avers affirmatively that neither the claimant nor any person under whom it holds had been seized or possessed of said 420 feet or any part therein within the period prescribed by the statute of limitations applicable to such cases; and further, that the alleged cause of action had not accrued within the period of four years. Upon the trial of the issues, the court found the facts to be as follows:

"1. That the plaintiff was incorporated in the State of California, on the twenty-third day of June, A. D. 1863.

"2. That the trust deeds were executed to the 420 Mining Company, located in the Virginia mining district, county of Storey, territory of Nevada, the first bearing date September 30, 1863, and the second, July 5, 1864, and each conveys all the right, title and interest of the parties therein named, as grantors of, in and to that certain mining ground known as the mining ground of the 420 Mining Company. No other description of the ground is given, and no title in either of the grantors to the mining ground in dispute in this action was shown.

"3. That some time in the fall of 1859, a shaft was commenced on the northern end of the ground in dispute in this action, by some persons claiming to represent a company called the 420 company, and thereafter, down to the early part of the year 1863, work was done in three different shafts on the ground in dispute, by persons claiming to work for a company called the 420 company; that no further work for any company of that name is shown to have been done until some time in the year 1865, when some persons commenced work in a shaft on said ground, claiming to work for the 420 company, and continued there for a short time, until ejected by the employees of the defendant as hereafter stated.

"4. That on the sixteenth day of November, 1865, the defendant in this action filed a complaint in this court against the plaintiff, alleging that it was the owner of the ground in dispute in this action, and that the defendant had entered upon and taken possession of, and ousted the plaintiff from said mining ground now in dispute, and was still in possession thereof, holding adversely to the plaintiff, the Bullion Mining Company. Said complaint was sworn to by George W. Hopkins, Secretary of said Bullion Mining Company. To that complaint the defendant, the 420 Mining Company, this plaintiff, filed an answer denying specifically each allegation of the complaint, and the same was sworn to by C. J. Lansing, its attorney in the case; said action was pending untried until the — day of ——, 1872, when it was dismissed, on motion of the plaintiff therein.

"5. There was no evidence showing that any location of the mining ground in dispute in this action had ever been made by the plaintiff, or any person or persons through whom it claims.

"6. The defendant proved that it claimed under two locations of the ground, and claim in dispute in this action. The two claims were united early in 1863, under the name of the Bullion Mining Company, and on the eighteenth day of February, A. D. 1863, a trust deed, in which some of the original locators in each of said locations joined, was executed by various persons which conveyed in terms to this defendant, mining ground which embraces all the grounds in dispute in this action.

"7. In August, 1860, persons commenced work on the mining ground described in finding six, under the locations therein mentioned, and continued work until the conveyance made to the defendant as aforesaid, and defendant has continued to work thereon day and night, from that time to within a few months past, all the time claiming title to all of said mining grounds, including said ground in dispute.

"8. On the seventh day of June, 1866, defendant received from one G. W. Birdsall a deed of a mining claim, embracing the mining ground in dispute in this action. No title thereto was shown in said Birdsall; but defendant claimed title under that deed and the trust deed aforesaid.

"9. That the agents of defendant, in the year 1865, forcibly ejected from the mining ground in dispute in this action, the persons mentioned in finding three as working thereon for the 420 company, and from that time until the commencement of this action, and until the trial, the defendant has been in the actual, exclusive and unterrupted occupation and possession of all the mining ground in dispute in the action aforesaid, claiming title thereto, and claiming the same adversely to plaintiff.

"As a conclusion of law, I find that the defendant is entitled to judgment as prayed in the answer, and order accordingly."

Thereupon the following judgment or decree was entered:

"This cause came regularly for trial on the fifteenth day of August, A. D. 1873, and by oral consent given in open court, a jury was waived, and the trial had by the court; and the court having heard the evidence, and the cause being subsequently submitted, the judge this day filed his findings of fact herein in favor of the defendant. Thereupon it was ordered by the court, that judgment be accordingly entered for the defendant. Wherefore it is ordered and adjudged that the plaintiff is not entitled to any of the relief prayed for in its complaint, and that it take nothing by its action. It is further adjudged that the defendant have and recover of the plaintiffs its costs of suit, taxed at $155.05.

"Judgment filed August 21, 1873."

The following are the provisions of the Act of Congress construed by the court:

Section 1 of the Act of July 26, 1866, "granting the right of way to ditch and canal owners over the public lands, and for other purposes," declares, "mineral lands on the public domain to be free, and open to exploration and occupation by all citizens of the United States," subject to such regulation as may be prescribed by law, and subject also to the local customs and rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States." Section 2 provides that "whenever any person, or association of persons, claims a vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar or copper, having previously occupied and improved the same according to the local customs and rules of miners in the district where the same are situated, and having expended in actual labor and improvements thereon an amount of not less than $1,000, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for such claimant, or association of claimants, to file in the local land office a diagram of the same, so extended laterally or otherwise, as to conform to the local laws, customs and usages of miners, and to enter such tract, and receive a patent therefor, granting such mine," etc.

Section 3 provides "that upon the filing of the diagram as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the Register of the Land Office shall publish a notice

of the same in a newspaper published nearest the location of said claim, and shall also post such notice in his office, for the period of ninety days; and after the expiration of such period, if no adverse claim shall have been filed, it shall be the duty of the Surveyor General, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed, and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the Register of the Land Office shall transmit to the General Land Office, said plat, survey and description, and a patent shall issue for the same therefor."

Section 6 provides as follows:

"That whenever any adverse claimant to any mine located and claimed as aforesaid, shall appear before the approval of the survey, as provided in the third section of this act, all proceedings shall be stayed until final settlement and adjudication in the court of competent jurisdiction, of the rights of possession to such claim, when a patent may issue as in other cases."

Section 9 makes similar provisions for confirming water rights under like circumstances; that is to say, "whenever by priority of possession rights to the use of water for mining, agricultural, manufacturing and other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected therein." On July 9, 1870, six sections were added to the act, and were thenceforth to form a part of it. Similar rights under section 12 (section 1 of the new act), were extended to the possessors of placer claims; and section 13 provided that, "where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim."

In 1872, a new act was passed as a substitute for much of the former acts, making still more specific provisions as to mode of proceedings, etc., but providing that the repeal of portions of former acts should not affect rights already vested thereunder, and that proceedings to perfect such vested rights might be had in pursuance of the provisions of the new act.

Sawyer, Circuit Judge, after stating the facts: Upon the facts shown by the bill of complaint, the defendant insists that the right of the four hundred and twenty feet of the Comstock lode in question, and consequently the right to the patent, appears in the bill to have been once directly put in issue in an action between the same parties, fully litigated and determined in favor of the defendant, and that the matter is *res adjudicata*, and a bar to further litigation. On this ground it is claimed that the bill shows no equity. After a careful consideration of the acts of Congress, set out in the statement of the case, it is clear

to my mind, that it was the intention of Congress to give the right of purchase of a mining claim, to a silver or gold-bearing lode or vein, to the person, or association of persons, who, in pursuance of the laws of the State or Territory, and the local mining customs, rules and regulations of the place where located, recognized by the laws and enforced by the courts, is the owner, and entitled to the possession as against everybody, except the government of the United States. It will be seen that the act expressly refers to and recognizes the laws of the State or Territory, the local customs, rules and regulations, not in conflict with the laws of the United States, the decisions of the courts, and even in express terms the State and Territorial statutes of limitations applicable to the subject. The act requires the party seeking a patent to file a diagram of the claim, and post a copy in a conspicuous place on the claim, together with a notice of intention to apply for a patent, and requires the Register of the land office also to publish a notice of the same in a newspaper, published at the nearest place, for ninety days. It then authorizes the adverse claimant, before approval of the survey, to file a protest, upon which all proceedings are stayed "until final settlement and adjudication in the courts of competent jurisdiction of the rights of possession to such claim, when a patent may issue as in other cases. That adjudication is to be had in the ordinary courts, and to be determined under the ordinary rules, regulations, customs and laws of the locality. It seems impossible to come to any other conclusion, than that the party who at the time can maintain his right to the claim in the courts of the country as against any person but the United States, under the local laws, customs, rules and regulations, is the party upon whom Congress intended to confer the right to purchase, no matter how that right originated, if under such laws and customs and decision of the courts he has the present right. And this is simply a right to purchase a privilege given to the party, of which he may avail himself or not, exactly like a pre-emption law, and founded upon similar reasons and policy; and what this privilege is, is stated in the case of *Hutton vs. Frisbie*, 37 Cal. 479, and *Frisby vs. Whitney*, 9 Wall. 191.

The case is in no wise like the case of an inchoate, imperfect Spanish grant; but is in all respects like a case under the pre-emption laws. The object of a determination of the right by litigation where there is an adverse claim, is simply to ascertain the party who has the right to the claim under the laws of the State, and local rules and customs; for that person, when found, is the party upon whom the law confers the privilege—the right of purchase. There is no bounty about it, for the party must pay for the land five dollars per acre and the cost of survey, which is more than double the price of ordinary public lands. Undoubtedly the price is often far less than the real value, and so it is in ordinary pre-emption cases; but this fact in no way affects the principle upon which the law proceeds. Doubtless the object of conferring the privilege is to encourage exploration of hidden mines, as the privilege in ordinary cases of pre-emption is to encourage settlement and cultivation of the public lands, for the purposes of developing the resources, and contributing to the general prosperity of the country.

If I am right in this view—and it really does not seem open to serious argument—then, in order to ascertain which party was entitled to a

patent, it is only necessary to determine which party at the time of the issue was the rightful owner of the mining claim in question as against everybody but the United States, under the laws, rules, customs and the decisions of the courts in force at the time in the locality embracing it, without regard to the act of Congress; for the act of Congress remits the parties to these laws, rules, and customs solely to determine their rights.

* * * * * * * *

It is further argued on the part of the complainant, that the statute of limitations does not apply, because the title is in the United States, and such statutes do not run against the government; and Gibson *vs.* Choteau (13 Wall. 92,) is cited to sustain the position. But this case can have no application, for as we have seen, the party who is the owner of the mining claim as against everybody but the United States, under the laws of the State or Territory, and the rules and regulations of the locality embracing the mine, irrespective of the act of Congress, is the party entitled to a patent, and the statutes of limitations of the State or Territory applicable to the subject themselves constitute a part of the laws by which the right to a mining claim is to be determined, for the purpose of ascertaining who is the party upon whom the right to purchase is conferred by the act of Congress; such statutes, as we have seen, are expressly recognized by section 13, of the act of Congress as a part of the laws by which the right to a patent is to be determined.

So, again, it is urged that there was a trust, or confidence, reposed in the defendant and its grantors by complainant and its grantors, as tenants in common, which precluded the defendant from acquiring the title except for the benefit of all. This proposition is also untenable. According to the allegations of the bill, there was a valid parol partition and segregation of the interests of the parties, executed and followed by exclusive possession in pursuance of such partition. Such partitions are, doubtless valid, (Long *vs.* Dollarhide, 24 Cal. 218). Thus the parties by this partition ceased to be tenants in common, and forever after dealt at arm's-length. Besides, the taking possession of the whole under conveyance from the former locators, claiming to own the whole, and excluding the complainant and its grantors, was a hostile act, which constitutes an ouster, and set the statute of limitations in motion. It certainly will not be claimed that one tenant in common cannot oust his co-tenant, and by long continued adverse possession bar his right. But, as we have seen, the parties had ceased to be tenants in common.

After a careful consideration of the case, I am satisfied that the right of the defendant as against the complainant was exclusively adjudicated in the former action, and that the patent properly and rightfully issued to the defendant in its own right.

This decision is given in full in 3 Sawyer 634.

SUPREME COURT—STATE OF OREGON.

THE GOLD HILL QUARTZ MINING COMPANY, APPELLANT, *vs.* JACOB ISH, RESPONDENT.

Eminent Domain.—Mines of precious metals belong to the eminent domain of the political sovereignty.

Occupancy.—Right of, recognized by the Act of Congress of July 26, 1866.—The general Government extended to all in possession of mining claims, and all subsequently

locating and denouncing mines containing the precious metals, a guarantee of protection in their occupancy so long as the mines are operated.

Pre-emption.—The provisions relative to pre-emption of mining lands in said act, and the amendments thereto, are not obligatory.

Patent to Mineral Lands.—A patent for agricultural lands does not pass title to known deposits of precious metals.

Effect of Failure to Segregate Mineral Lands.—Failure of government surveyors to segregate mineral from agricultural lands cannot operate to defeat the rights of occupant miners.

APPEAL FROM JACKSON COUNTY.

This suit was instituted to quiet the title to and enjoin the respondent from asserting any rights in and to a certain gold-bearing quartz lode, situate in Jackson county.

The complaint alleges that Henry Klippel, John McLaughlin, Charles S. Drew, N. C. Dean, Thomas Chavner and John E. Ross, on December 5, 1865, located six claims upon the said lode, in accordance with the provisions of the state laws and the local laws and customs of miners. On December 11, 1865, the said parties filed articles of incorporation under the general laws of the state. The name of the incorporation was declared to be "The Gold Hill Quartz Mining Company;" the capital stock was fixed at $60,000, and the object was the working of the said lode. The company was duly organized, the stock-books opened and the stock subscribed. Contemporaneous with the filing of the said articles of incorporation, the parties aforesaid duly transferred their claims to the said company. Ever since said transfer, and up to July 8, 1871, the said company were in possession of said claims, working said lode by driving tunnels, etc., for the purpose of procuring the quartz rock and extracting the gold therefrom, and had, up to said date, expended thereon $1,090. The possession of the said company was open and notorious, and the respondent had actual notice thereof, and of the character and extent of the appellant's claims.

On June 15, 1870, respondent applied to the officers of the proper United States Land Office to purchase the west half of the northeast quarter and east half of the northwest quarter of section fourteen, township thirty-six south, of range three west, of the Willamette meridian, upon which the lode in controversy is situated; and having been allowed to purchase said lands as agricultural lands, a patent therefor was issued to respondent on August 11, 1870. The said patent was recorded July 8, 1871, and until said date the appellant had no notice of the application for and purchase of said lands by the respondent, nor that respondent had any claim to or interest in the same.

The respondent demurred to the complaint. After argument the court below sustained the demurrer and dismissed the complaint with costs.

From the order dismissing the same this appeal is taken: *J. D. Fay* and *W. W. Thayer* for appellant; *B. F. Dowell* and *H. Kelly* for respondent.

By the Court, McArthur, J.: The claims upon the gold-bearing quartz lode in controversy were located and taken up in the year 1865, in accordance with the provisions of the act of the legislative assembly of the State of Oregon, approved October 24, 1864, and the acts amendatory thereof. They were "opened up" and operated under

the State laws for a number of months prior to the passage of the Act of Congress of July 26, 1866, commonly called the "mining act." This act was the first direct and positive recognition on the part of the general government of the right of the citizen to explore the public domain for the precious metals, and to denounce and operate mines when found. Anterior to the passage thereof, the general government, in carrying out a policy redounding to the public good, tacitly consented to the search for and development of the mines, and the courts, applying what has been often denominated "the common law of the mines," uniformly protected the rights of those engaged in mining for the precious metals.

They recognized the binding force of the local laws, customs and usages of the miners in all cases, when those local laws, customs and usages did not conflict with written constitutions or legislative enactments. Taking into consideration the condition of the country and the importance of encouraging mining operations, and the non-action of the general government, they held that those engaged in mining for the precious metals enjoyed a species of franchise in the mines, and that they held the same free from all molestation or interference of all parties save the general government.

That the general government has the exclusive right to control the mines has never been seriously questioned; the principle being conceded that mines of precious metals belong to the eminent domain of the political sovereignty, as well under the laws of Spain as by the common law of England and public law of the United States.

All the reported cases in California and Nevada lead to the conclusion that the non-action of the general government raised such a presumption of license to those engaged in mining for the precious metals as to give them a standing in the courts to assert their rights and redress their wrongs against all persons except the general government.

The right of mining for the precious metals is a franchise, and the attending circumstances raise the presumption of a general grant from the sovereign of the privilege. (*Conger vs. Weaver*, 6 Cal. 548; *Merced Mining Company vs. Fremont*, 7. Id. 327; *Hill vs. King*, 8 Id. 338; *McKeon vs. Brisbee*, 9 Id. 142; *Partridge vs. McKinney*, 10 Id. 183; *State vs. Moore*, 12 Id. 70; *Curtis vs. Sutter*, 15 Id. 263; *Hughes vs. Devlin*, 23 Id. 506; *Horn vs. Jones*, 28 Id. 202; *Pralus vs. Jefferson G. and S. Mining Company*, 34 Id. 559; *Correa vs. Frietas*, 42 Id. 340.)

Accepting this as a postulate, it follows that the general government itself could not equitably interfere with, or abridge the rights of the miner. We are of the opinion that "there are equitable circumstances connected with these mining claims that are clearly binding upon the conscience of the governmental proprietor, that must never be disregarded. Rights have become vested in virtue of the license that cannot be divested without a violation of all the principles of justice and reason."

In *Sparrow vs. Strong* (3 Wallace 104), Chief Justice Chase used the following forcible language: "We know that the Territorial Legislature (of Nevada) has recognized by statute the validity and the binding force of the rules, regulations and customs of the mining districts. And we cannot shut our eyes to the public history which informs us

that under this legislation, and not only without interference by the national government but under its implied sanction, vast mining interests have sprung up, employing many millions of capital and contributing largely to the prosperity and improvement of the whole country."

The decision quoted from, which was rendered in December, 1865, is a clear recognition by our highest judicial tribunal of the underlying principle upon which rest the rules governing this species of property, which have had practical operation for nearly a quarter of a century.

It follows, then, that the locators and operators of the claims upon the quartz lode in controversy, were invested with a franchise which the courts would protect and uphold. Thus they stood before the passage of the act of Congress of July 26, 1866.

By this act the mineral lands of the public domain, both surveyed and unsurveyed, are declared to be free and open to exploration and occupation to all citizens of the United States, and those who have declared their intentions to become citizens, subject to such regulations as may be prescribed by law.

Any person or association claiming a vein or lode of quartz rock in place, bearing gold, silver, cinnabar or copper, who have expended in improvements thereon not less than one thousand dollars, and have occupied and improved the same according to the local customs or rules of miners in the district, and in regard to which there is no controversy or opposing claim, may acquire title to the same by filing a diagram, in the local land office, of said claim, giving notice and performing such other acts as are prescribed by law. As has before been stated, this act was the first direct and positive recognition on the part of the general government of the right of the citizen, and the alien who had declared his intention to become such, to explore the public domain for the precious metals, and to denounce and operate mines when found. Whatever difference of opinion may exist as to the tenure by which mining claims were held prior to the passage of this act of Congress, it is clear that, by the act, the general government extended to all in possession of mining claims, and to all subsequently locating and denouncing mines containing the precious metals, a guarantee of protection in their occupancy so long as the mines are operated and worked. The lode in controversy was, when "claimed," situate upon surveyed lands belonging to the general government. Pursuant to instructions, the lands were sold as agricultural lands, and patented to Ish on August 11, 1870.

The application to purchase was made subsequent to the passage of the act of 1866, and at a time when the possession of the appellant was open and notorious. Thus the adverse interest of Ish, if any interest he has, did not accrue until after the passage of the said act, and was, therefore, in violation of the guarantee of occupancy created by the first section thereof. But Ish obtained no interest in the mining claims on the lode by the patent. True, by the patent he obtained a given quantity of agricultural lands, and the lode is situated upon said lands; but the known deposits of precious metals did not pass by the patent, for they are expressly reserved from sale under the pre-emption and other land acts. The only law under which patent to mining

claims, either lode or placer, can be obtained, is the act of 1866, and the amendments thereto.

The fact that the claims of the appellant were not segregated and listed as mineral lands, cannot avail the respondent. Segregation, when required, must be made by the surveyor; and to hold that the failure of the surveyor to fully discharge his duty could operate to defeat the rights of the appellant, would be violative of the plainest principles of justice. Moreover, the returns of the surveyor are not conclusive as to the character of the lands, for the Commissioner of the General Land Office, in carrying out the policy of the general government in the disposal of the public lands, allows affidavits as to the character of the lands to be made in impeachment of the returns of the surveyors. The open and notorious possession of the appellant was sufficient to charge the respondent with notice of the character of the lode, and also to bring the lode within the description of "known mineral deposits." Nor are the rights of the appellant forfeited, nor in the least abridged, by failure to procure a patent for the claims upon the quartz lode. "It is understood," says the Commissioner of the General Land Office, in the instructions to the local land officers, "that there is nothing obligatory on claimants to proceed under the statute (act of 1866); and where they fail to do so, there being no adverse interest, they hold the same relation to the premises they may be working, which they did before the passage of the act, with the additional guarantee that they possess the right of occupancy under the statute. [Copp's Mining Decisions, 245.]

Before leaving this case it becomes necessary to allude to the prayer of the complainant, and to express our views in relation to the proper relief to be afforded. The prayer asks for a decree of the circuit court, declaring the defendant a trustee for the plaintiff; that the defendant be required to execute a good and sufficient deed to the plaintiff of the land included within the boundaries of the claims, and also for a perpetual injunction inhibiting the defendant from setting up any title to said claims.

Inasmuch as Ish never obtained title to the lode, he cannot be decreed to be trustee for the plaintiff, nor can he execute a deed conveying to the plaintiff the legal title.

The proper relief to be granted is an injunction order perpetually enjoining and inhibiting Ish, and all persons claiming, or to claim by, or through, or under him, from asserting any title to the lode, and also from in any manner interfering with the plaintiff in entering upon and working the claims thereon.

Decree reversed.

SUPREME COURT OF THE UNITED STATES.

NO. 637.—OCTOBER TERM, 1880.

The Ivanhoe Mining Company, Plaintiff in Error, *vs.* The Keystone Consolidated Mining Company.	In error to the Circuit Court of the United States for the District of California.

1. The grant of the sixteenth and thirty-sixth sections of public lands to the State of California by the Act of March 3, 1853, was not intended to cover mineral lands, but such lands were excluded from that grant, as they were from all others, by the settled policy of the general government on that subject.

2. The settlement required by the seventh section of the Act of 1853, which defeats the grant of those sections for school purposes, need not be precisely the same, either in regard to the acts to be done or the character of the settler, as is required under the general pre-emption law of 1841. The settlement on the school lands under the act of 1853 is governed by that act.
3. Whenever there exists, at the time the government survey is made of such a section, a settlement, by dwelling-house or cultivation, on any portion of said section, on which some one is residing and asserting claim to it, the title of the state to that portion does not vest, but the alternative right to other land as indemnity does. *Sherman vs. Buick*, 93 U. S. R., 209, and *Natoma Water Co. vs. Bugby*, 96 U. S. R., 165, commented on and explained.

Mr. Justice Miller delivered the opinion of the court.

The action in this case was brought originally in the state court of California by Daniel W. Gillette against the present defendant in error, to recover possession of the east half of section 36, in township 7 north, range 10 east, of Mount Diablo meridian, and in the progress of the case it was transferred to the circuit court of the United States, where judgment was rendered in favor of the defendant. The plaintiff in error having been substituted for Gillette, as his successor in interest, the case was submitted to the court by the parties waiving a jury.

The plaintiff asserted title to the land in controversy under a patent from the State of California, and the defendant under patents from the United States. The title of California rests upon the act of Congress granting that state the 16th and 36th sections of every township for school purposes, and that of defendant on the acts of Congress concerning the possession and sale of the mineral lands.

As the question to be decided necessarily involves the title to much other mineral land in California, in which the authorities of the State of California, and the officers of the land department of the United States, entertain and act upon conflicting views of the rights of the state and the general government, the State of California, by her counsel, and the United States, by the Attorney-General, have been permitted to take part in the argument.

The defendant only claims part of the land embraced in plaintiff's patent, and denies the possession of that for which no title is asserted; and as no possession is proved beyond that for which the defendant defends, only that is in controversy.

The court below finds that this is mineral land, and that the patent of the United States was issued to defendant for three several mining claims, to wit: the Spring Hill, the Geneva, and the Keystone; that the Spring Hill was located in May, 1851, the Keystone in 1853, and the Geneva in October, 1863; and that the original locators of said claims and their grantees have held undisturbed possession thereof ever since, and by such possession, and the working of said mines, the possessory title was vested in defendant at the time it filed its application for said patent in the land office of the United States at Sacramento, January 6, 1871, unless the State of California had acquired title to section 36 by grant from the United States. It also appears that on the land thus claimed by plaintiff, a mining town called Amador City exists, of about 400 or 500 people, which began in 1850, and reached the number mentioned in 1853, with many dwelling-houses, and some forty acres cultivated by the owners of the Keystone mining claim.

On the 18th June, 1870, one Henry Casey applied to the State authorities to purchase the half-section of land on which this town and these mining claims were located, and a State patent was issued to his vendee, Gillette, October 3, 1872.

The township in which this land lies was surveyed in the field in March, 1870, the survey approved September 3, 1870, and the plat filed in United States land office at Sacramento, October 7, 1870; and within three months after this latter date the application of the defendant was made for patents for the three mining claims, and the patents issued July 14, 1873.

The right to these patents, and the claim of the town of Amador City, were contested before the Register and Receiver, the Commissioner of the General Land Office, and the Secretary of the Interior, by the State of California and the parties claiming under her, and the decision was adverse to the title of the State. [See page 100.]

The question, and the only question, presented for our consideration is very sharply presented by this statement of facts and by the acts of Congress pertinent to the subject; and it is whether under these acts the title of the land in question became fixed and vested absolutely in the State of California, on the ascertainment by the survey of 1870 that it was part of the thirty-sixth section of the township in which it lies.

The act of March 3, 1853, under which the right of the State of California to the school lands arises, has been the subject of construction in this court more than once heretofore, and the decision of the question before us requires a further critical examination of its provisions. The first five sections of it provide for the establishment of the offices of surveyor-general, two land offices, with registers and receivers, and for the organization of the general land system of the United States, including surveys; and it then proceeds to lay down the rules by which rights to the public lands may be acquired. The granting clause of the sixteenth and thirty-sixth sections of the public lands as thus surveyed, to the State of California, is as follows:

"SEC. 6. And be it further enacted, that all the public lands in the State of California, whether surveyed or unsurveyed, with the exceptions of sections sixteen and thirty-six, which shall be, and hereby are granted to the State for the purposes of public schools in each township, and with the exception of lands appropriated under the authority of this act, or reserved by competent authority, and excepting, also, the lands claimed under any foreign grant or title, and the mineral lands, shall be subject to the pre-emption laws of fourth September, eighteen hundred and forty-one, with all the exceptions, conditions, and limitations therein, except as is herein otherwise provided; and shall, after the plats thereof are returned to the office of the register, be offered for sale, after six months' public notice in the state of the time and place of sale, under the laws, rules, and regulations now governing such sales, or such as may be hereafter prescribed."

Section seven of the act may as well be read here, as it is important to a true solution of the question under consideration.

"SEC. 7. And be it further enacted, that where any settlement, by the erection of a dwelling-house or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections,

before the same shall be surveyed, or where such sections may be reserved for public uses or taken by private claims, other lands shall be selected by the proper authorities of the state in lieu thereof, agreeably to the provisions of the act of Congress approved on the twentieth of May, eighteen hundred and twenty-six, entitled 'An act to appropriate lands for the support of schools in certain townships and fractional townships, not before provided for,' and which shall be subject to approval by the Secretary of the Interior. And no person shall make a settlement or location upon any tract or parcel of land selected for a military post, or within one mile of such post, or on any other lands reserved by competent authority; nor shall any person obtain the benefits of this act by a settlement or location on mineral lands."

The twelfth section grants to the state seventy-two sections for the use of a seminary of learning, to be selected by the governor or some one appointed by him, in legal subdivisions of not less than a quarter-section, of any unsold, unoccupied, and unappropriated public lands, "Provided, that no mineral lands, or lands reserved for any public purpose whatever, or lands to which any settler may be entitled under the provisions of this act, shall be subject to such selection."

The thirteenth section also grants the State ten sections of land for the purpose of erecting the public buildings of the State, with the same proviso as the one to section twelve.

The proviso to the third section is also relied upon as indicative of the purpose of Congress in regard to the mineral lands of California. That section contains the authority under which the Surveyor-General is to act in surveying the public lands in that State, and after investing him with the powers conferred on other Surveyors-General, and some specific directions for the survey of private land claims, it is "*Provided*, that none other than township lines shall be surveyed where the lands are mineral, or are deemed unfit for cultivation; and no allowance shall be made for such lines as are not actually run and marked on the field, and were actually necessary to be run."

It is strongly urged by plaintiff's counsel that the language of the granting clause imports a grant *in presenti*, and that wherever by any survey of the government thereafter made the location of the sixteenth and thirty-sixth sections of a township was ascertained, it establishes the title in the State from the date of the statute, namely, March 3, 1853.

It is quite unnecessary to enter upon this question, which has been before us in so many shapes, for if it be conceded that such would be the effect of the statute if there were no words of exception in the grant, Congress has, in nearly every case where the question has arisen, made such specific exceptions to the operation of the grant as to decide the matter without resort to the rule of construction asserted by plaintiffs.

Take, for instance, railroad grants. Besides the more general reservations from the grant, there is almost always found a provision that where, by the location of the road, the sections on each side of it are ascertained which would pass by the general terms of the grant, those which have been pre-empted, sold, or otherwise disposed of, shall not so pass, but the grantee may select other lands in lieu of those, which may be said in this manner to be excepted out of the grant.

This is true of the statute under consideration, and we may pass

this branch of the argument by conceding that if the land in controversy is subject to the grant, the title relates to the date of the act of Congress.

Defendants allege that it was not so subject to the grant, for two reasons:

1. That it is mineral land, and that the grant of school lands to the state does not cover any mineral land.

2. That by virtue of the seventh section, such settlement and cultivation had been made on the land, before the survey was made, as to take it out of the grant, and remit the state to the selection of other public land in lieu of this.

We will consider these in their order.

Very soon after the conquest of California, and its cession to the United States by Mexico, it was found to be rich in the precious metals; and such was the rapid influx of immigrants from the Eastern States that the California population, at the time it was organized as a state in 1850, was largely composed of mining camps and settlements engaged in mining these metals. As nearly all those mines were discovered on land the title of which was vested by the treaty in the government of the United States, it became important to determine what course the government would take with regard to this new source of untold wealth. The Spanish government, to which this territory and much other, rich in precious metals, had once belonged, had instituted a system of laws concerning her mines by which private enterprise was invited to develop them, and a revenue secured at the same time to the crown, which made Spain for a time the richest of the civilized governments of the world. This system Mexico had inherited and perpetuated, and there were many American statesmen who believed that with the territory we had acquired the laws which governed the production of gold from the earth. Others believed that whether this were so or not, it would be a wise policy for the government to secure to itself a fair proportion of the metal produced from its own ground. But, while Congress delayed and hesitated to act, the swarm of enterprising and industrious citizens filled the country, and before a state could be organized, had become its dominating element, with wealth and numbers and claims which demanded consideration.

Matters remained in this condition, with slight exception, until the year 1866, when Congress passed a law by which title to mineral land might be acquired from the government at nominal prices, and by which the idea of a royalty on the product of the mines was forever relinquished. (14 U. S. Statutes, 251.)

During this period, however, from 1849 to 1866, the system of the disposition of the public lands in general had to be introduced into California, and grants of land were made to the state for various purposes, also to railroad companies; and in all this the attention of Congress was necessarily turned to the distinction between mineral lands and the ordinary agricultural lands of the other western states to which similar laws had applied. This distinction is nowhere more plainly manifested than in this act of 1853. As we have said in Sherman *vs.* Buick, 93 U. S. R. 209, the main purpose of that act was to provide for the survey and sale of the public lands and for the right of preemption to the settler on these lands, and there was embraced in this

clause of pre-emption the grant of the sixteenth and thirty-sixth sections to the state for school purposes. In the very sentence which contains this grant in parenthesis, and while introducing the new principle, that the public lands should be subject to the right of pre-emption, whether surveyed or unsurveyed, the mineral lands are excepted, in express terms, from this right and from public sale.

We say that this introduced a new principle in pre-emption law, for except in a very few cases, no right of pre-emption had before existed until the lands were surveyed, so that the pre-emptor could designate by the description of the congressional survey the precise land to which his pre-emption attached.

But this right of pre-emption, on unsurveyed lands, was by this statute to last but one year, and so careful was Congress to protect mineral land from sale and from pre-emption, that, as we have already shown by the proviso to section three of the act, the surveyors were forbidden to extend their surveys over mineral lands.

The effect of this was as Congress intended it should be, that as no surveys could be made of mineral lands until further order of Congress, there could be no sale, pre-emption, or other title acquired in mineral lands until Congress had provided by law for their disposition. The purpose of these provisions was undoubtedly to reserve these lands, so much more valuable than ordinary public lands, and the nature of which suggested a policy different from other lands in their disposal. for such measures in this respect as the more matured wisdom of that body which by the Constitution is authorized to dispose of the territory or other property of the United States, should afterwards devise.

It is a strong corroboration of this view that Congress in the section (12) of this same statute giving the State seventy-two sections for a seminary of learning, declares that no mineral lands shall be taken under the grant, and makes the same reservation of its mineral lands in the grant for the erection of public buildings in the State.

We find a similar provision in the grant to the Pacific Railroad Companies, whose road it was known would pass through some of these mineral regions. By the fourth section of the Act of 1864, 13 U. S. Statutes, 358, it is declared that neither that act nor the Act of 1862 shall be held to include in the grant "any government reservation or mineral lands or the improvements of any *bona-fide* settler on any lands *returned or denominated* mineral lands."

As we have already said, Congress, after keeping this matter in abeyance about sixteen years, enacted in 1866 a complete system for the sale and other regulation of its mineral land so totally different from that which governs other public lands as to show that it could never have been intended to submit them to the ordinary laws for disposing of the territory of the United States.

Taking into consideration what is well known to have been the hesitation and difficulty in the minds of Congressmen in dealing with these mineral lands, the manner in which the question was suddenly forced upon them, the uniform reservation of them from survey, from sale, from pre-emption, and above all from grants, whether for railroads, public buildings, or other purposes, and looking to the fact that from all the grants made in this act they are reserved, one of which is for school purposes besides the 16th and 36th sections, we are forced to the con-

clusion that Congress did not intend to depart from its uniform policy in this respect in the grant of those sections to the State.

It follows from the finding of the court and the undisputed facts of the case, that the land in controversy being mineral land, and well known to be so when the surveys of it were made, did not pass to the State under the school-section grant.

It seems equally clear to us that the land is excepted from the grant by the terms of the seventh section of the Act of 1853.

In the case of Sherman *vs.* Buick (93 N. S. 209), we have said in reference to this section that it was unnecessary to decide whether the improvements found on the land when the survey was made, and the character of the person owning them, should be in all respects those which are prescribed by the general pre-emption law. We are now satisfied that this section prescribes its own rules on that subject, and that whenever, at the time these sections are ascertained by the government survey, there is either a dwelling-house or the cultivation of any portion of the land, on which some one is residing and is asserting claim to it, the title of the state does not vest, but the alternative right to other land as indemnity does. It is only necessary to look to what we have said in Sherman *vs.* Buick, of the fact that Congress had in view the rapid settlement of the country, and the long time which might elapse before it could be known by actual survey where these school sections would be found, to see that a liberal construction must be given to the language by which Congress expresses its purpose to protect these settlements, buildings and cultivations, and that we have no right to add other qualifying incidents to the exercise of this right than those found in the statute. These are not the same required under the general pre-emption law, and we have no authority to import the latter into the new statute.

Some of the expressions found in Sherman *vs.* Buick, and in the Natoma Water Co. *vs.* Bugby, 96 U. S. R., 165, are supposed by counsel to convey a different meaning; but in the use of the words pre-emption and pre-emptor, in reference to *this section of the statute*, it was not designed to imply all that was meant by those terms in the act of 1841 and its amendatory adjuncts, but to convey the idea of a settlement and a settler according to the terms of the statute under consideration. Nor is there anything in the principle announced in the latter case, that where a settler abandons his claim to hold the land against the state by virtue of such settlement or improvement, and acknowledges the title of the state by purchase, that his improvement or settlement cannot be set up by a third person to defeat the title of the state recognized by the United States, which conflicts with what we have just said, or with the defendants' rights in the present case. Here the settlement, building, and cultivation, have been continuous for twenty years, with constant assertion of claim. The same parties or their privies are still claiming it. None of them have accepted title under the state, or acknowledged its right to the land. The government of the United States has given them a patent founded on this very possession, use, and occupation. Nothing in that opinion justifies the construction placed upon it by counsel, and the case is clearly inapplicable to the one before us.

We are of opinion that the settlement, building, and cultivation,

found as facts by the circuit court, bring the case within the provisions of the seventh section of the act of 1853, and necessarily render void the title asserted under the state by plaintiff.

It follows that the judgment of the circuit court is right, and it is accordingly affirmed.

SUPREME COURT OF THE UNITED STATES.

NO. 878.—OCTOBER TERM, 1876.

Solomon Heydenfeldt, Plaintiff in Error, *vs.* The Daney Gold and Silver Mining Company,	In error to the Supreme Court of the State of Nevada.

1. *School Sections in Nevada.*—At the time of the passage of the Nevada Enabling Act, approved March 21, 1864 (13 Stat., 30), Sections 16 and 36, in the several townships, had not been surveyed, nor had Congress then made, or authorized to be made, any disposition of the public domain within the limits of Nevada.
2. *State of Nevada to Receive Compensation for Lost School Sections.*—The words of present grant in the seventh section of that act are restrained by words of qualification, which were intended to protect the proposed new State against loss that might happen through the subsequent action of Congress in selling or disposing of the public domain. If by such sale or disposal, the whole or any part of the sixteenth or thirty-sixth section in any township, was lost to the State, she was to be compensated by other lands equivalent thereto, in legal subdivisions of not less than one quarter section each.
3. *When Mineral Claimant's Right is Superior to State Claimant's.*—A qualified person whose settlement on mineral lands, which embrace a part of either of said sections, was prior to the survey of them by the United States, who, on complying with the requirements of the Act of Congress, approved July 26, 1866 (14 Stat., 251), received a patent for such lands from the United States, has a better title thereto than has the holder of an older patent therefor from the State.
4. *United States Title to Mineral Lands Recognized.*—The legislative act of Nevada of February 13, 1867, recognized the validity of the claim of the United States to the mineral lands within that State. (3 Otto 634.)

Mr. Justice Davis delivered the opinion of the Court.

This is an action of ejectment to recover a specific portion of the west half of the southwest quarter of section sixteen, township sixteen, range twenty-one east, in Lyon county, Nevada. The land in controversy is rich in minerals, and was not surveyed by the United States until the year 1867. Prior to the date of the survey, or the approval of it, the defendant's grantors and predecessors in interest had for mining purposes entered upon the land, and claimed and occupied it according to the mining laws and the customs of miners in the locality. This possession and claim of ownership have been continuous and uninterrupted, and the defendant has expended over eighty thousand dollars in the construction of improvements for carrying on the business of mining on the land.

The plaintiff claims title from the State by patent. It is dated the 14th day of July, 1868, and was issued on the assumption that sections sixteen and thirty-six, whether surveyed or unsurveyed, and whether containing minerals or not, were granted to the State for the support of common schools, by the seventh section of the Nevada enabling act, approved March 21, 1864, 13 Stat. 32.

This interpretation of that act is denied by the general government, and the defendant has a patent of the 2d of March, 1874, from the United States, for the land in controversy, issued in conformity with the laws of Congress on the subject of mining. Which is the better title, is the point for decision. It has been the settled policy of the

government to promote the development of the mining resources of the country, and as mining is the chief industry in Nevada, the question presented for decision is of great interest to the people of that state.

The seventh section of that act is as follows: "That sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter-section, and as contiguous as may be, shall be and are hereby granted to said state for the support of common schools."

It is true that there are words of present grant in this law, but in construing it we are not to look at any single phrase in it, but to its whole scope, in order to arrive at the intention of the makers of it. "It is better always," says Sharswood, Judge, "to adhere to a plain common-sense interpretation of the words of a statute, than to apply to them refined and technical rules of grammatical construction." (Gyges' Estate, 65 Pa. State 312.)

If a literal interpretation of any part of it would operate unjustly or lead to absurd results, and be contrary to the evident meaning of the act taken as a whole, it will be rejected. And there is no better way of discovering the true meaning of a law, when there are expressions in it which are rendered ambiguous by their connection with other clauses, than by considering the necessity for it and the causes which induced the legislature to pass it. With these rules as our guide it is not difficult, we think, to give a true construction to the law in controversy.

Congress, at the time, was desirous that the people of the Territory of Nevada should form a state government and come into the Union. The terms on which this admission could be obtained were proposed, and, as was customary in the enabling acts for new states, the particular sections of the public lands to be donated to the state for the use of common schools were specified. These sections had not been surveyed, nor had Congress then made, or authorized to be made, any disposition of the public lands within the Territory of Nevada.

But this condition of things did not stand in the way of Congress making proper provision on the subject. Some provision was necessary in order to place Nevada in this respect on equal footing with States recently admitted. But the people were not interested in getting the identical 16th and 36th sections in every township. Indeed, it could not be known until after survey where these sections would fall, and a grant of quantity put Nevada in as good a condition as other States, which had received the benefit of this bounty. A grant operating at once and attaching prior to the surveys by the United States, would deprive Congress of the power of disposing of any part of the public domain until there was a segregation by survey of the land granted. In the meantime further improvements would be arrested, and the persons who before the surveys were made had occupied and improved the country would lose their possessions and labor, in case it turned out that they had settled upon the granted lands. Congress was fully advised of the condition of a new community like Nevada; of the evil effects of such legislation upon its prosperity, and of all antecedent legislation upon the subject of the public lands within the bounds of

the proposed new State. In the light of this information, and surrounded by these circumstances, Congress made the grant in question. That it is ambiguous is very clear, for the different parts of it cannot be reconciled, if the words used are to receive their usual meaning. Schulenberg *vs.* Harriman (21 Wallace 44) establishes the rule that "unless there are other clauses in a statute restraining the operation of words of present grant, these must be taken in their natural sense." This is a correct rule, and we do not seek to depart from it, but there are words of qualification in this grant.

And these words restrict the operation of the words of present grant. If their literal meaning be taken, they refer to past transactions; but evidently they were not used in this sense, for there had been no lands in Nevada sold or disposed of by any act of Congress, and why indemnify the State against a loss that could not occur? There could be no loss, and there was no occasion of making provision for substituted lands, if the grant took effect absolutely on the admission of the State into the Union, and the title to the lands then vested in the State. Congress cannot be supposed to have intended a vain thing, and yet it is quite certain that the language of the qualification was intended to protect the State against a loss that might happen through the action of Congress in selling or disposing of the public domain. It could not, as we have seen, apply to past sales or dispositions, and to have any effect at all, must be held to apply to the future.

This interpretation, although seemingly contrary to the letter of the statute, is within its reason and spirit. It accords with a wise public policy, gives to Nevada all she has any right to ask for, and acquits Congress of passing a law which in its effects would be unjust to the people of the Territory. Besides, no other construction is consistent with the statute as a whole, and this alone answers the evident intention which the makers of it had in view, and this was to grant to the State *in præsenti* a quantity of land equal in amount to the 16th and 36th sections, the grant to take effect when the status of the lands was fixed by survey and they were capable of identification. Congress, however, reserved until this was done the power of disposition, and if in the exercise of this power the whole or any part of a 16th or 36th section had been disposed of, the State was to be compensated by other lands equal in quantity and as near as may be in quality. By this means the State was indemnified against loss, and the people ran no risk of losing the labor of years. While the State suffered no injury, Congress was left free to dispose of the public domain in any way it saw fit, to promote the interests of the people.

It is argued that, conceding the construction given this grant to be correct, this defence cannot be sustained, because the land in controversy was not actually sold by direction of Congress until after this survey. This position ignores a familiar rule in the construction of statutes, that they must be so construed as to admit all parts of them to stand if possible.—(Bouvier's Institutes, p. 42, sec. 7.)

The language used is, "sold or otherwise disposed of by any act of Congress," and the point made by the plaintiff would reject a part of these words from the statute.

To limit the qualification to the grant in this way would defeat one of the main purposes Congress had in view. Congress knew, as did

the whole country, that Nevada was possessed of great mineral wealth, and that mineral lands should be disposed of differently from those which were fit only for agriculture. No method for doing this had then been provided, but Congress said to the people of the territory, "You shall, if you decide to come into the Union, have for the use of schools a quantity of land equal to two sections in every township, and the identical sections themselves, if on survey no one else has any claim to them; but until this decision is made and the lands surveyed, we reserve the right either to sell them or dispose of them in any other way that commends itself to our judgment." This right of disposition is subject to no limitations, and the wisdom of not surrendering it is apparent. The whole country is interested in the development of its mineral wealth, and to accomplish this object adequate protection was required for those engaged in this business. This protection was furnished by the act of Congress of July 26, 1866 (14 U. S. Stats., p. 251), which was passed before the land in controversy was surveyed. This act disposes of the mineral lands of the United States to actual occupants and claimants, and provides a method for the acquisition of title from the United States. And these defendants occupied the land prior to the survey and were entitled to purchase, and the patent subsequently obtained from the government relates back to the time of the original location and entry, and perfects their title.

These views dispose of this case, but there is another ground equally conclusive. Congress, on the 4th of July, 1866 (14 Stat., p. 85), passed an act concerning lands granted to the State of Nevada, and among other things, reserved from sale all mineral lands in the state, and authorized the lines of surveys to be changed from rectangular, so as to exclude them. This was, doubtless, intended by Congress as a construction of the grant in this case; but whether that construction be correct or not, and whatever may be the effect of the grant in its original shape, it was clearly competent for the grantee to accept it in its modified form, and agree to any construction put upon it by the grantor. The state, through its legislature, (see act of February 13, 1867,) ratified the construction given to it by Congress, and accepted it with the conditions annexed.

We agree with the Supreme Court of Nevada, that this acceptance "was a recognition by the legislature of the state of the validity of the claim made by the government of the United States to the mineral lands."

It is objected that the constitution of Nevada inhibited such legislation, but the Supreme Court of the state, in the case we are reviewing, held that it did not (10 Nevada Reports, p. 314), and we think their reasoning on this subject is conclusive.

We see no error in the record, and the judgment is affirmed.

UNITED STATES DISTRICT COURT, DISTRICT OF COLORADO.

THE ST. LOUIS SMELTING AND REFINING COMPANY *vs.* THOMAS KEMP AND OTHERS.

Judge Hallett's charge to the jury:

This action is brought by the plaintiff to recover possession of a lot in the town of Leadville, lot No. 5, block No. 1, in the addition of the

St. Louis Smelting and Refining Company to the town of Leadville. The plaintiff attempts to show its right to this lot, and relies upon a patent which was issued in March last to one Thomas Starr, and upon a conveyance from Thomas Starr to August R. Meyer, and from August R. Meyer to the plaintiff.

This patent was introduced in evidence, and appears to be for 164.61 acres of land, and the question has arisen as to whether a patent may lawfully issue for so much land as a placer claim under the mineral laws of the United States. Of course, if the patent is not valid, as the plaintiff's title is derived from that, they cannot recover in this action, and therefore it becomes material to consider whether the patent is valid and effectual to convey the land or not. No question is made as to the conveyances from Mr. Starr to Meyer, and from Meyer to the St. Louis company, nor as to whether the lot in controversy is in the tract mentioned in the patent, and in that part of the same conveyed to Meyer and by Meyer conveyed to the plaintiff; so that the substantial question for your consideration is, whether the patent is a valid instrument or not. Now, upon that subject, Congress, in 1870, passed an act giving claimants of placer claims the right to obtain from the government a patent for such claim. An act had been passed prior to that, in the year 1866, giving such right as to lode claims, to persons having lode claims upon the public lands, to obtain a patent from the government by complying with the terms of the act; and that act, in its provisions, was very direct and specific as to the things to be done by the claimant in order to obtain a patent. He was to make a diagram of his location and file it in the local land office; he was to post a notice upon the claim for the time specified, with his application, and also publish a notice in a newspaper, which was to be designated by the land officer, describing his claim; and all this was intended to give to persons who might have an adverse claim an opportunity to come in and show their rights, and when they came, they were file a statement of their claim in the local land office, and thereupon the parties were referred to the courts, in which to settle their controversy. The adverse claimant was required to bring a suit in a court of competent jurisdiction against the claimant of the original applicant for a patent, and upon that suit between the parties was the right to be determined. The patent was to be awarded to the party who should be successful in that suit.

In this act of 1870, it was provided that the title to placer mines was to be obtained in the same manner and upon similar proceedings; that whatever was specified in the act of 1866 as to the method of proceeding as to lode claims, was also made applicable to placer claims by this act of 1870; and it was provided in that act, also, that no location of a placer claim thereafter made should exceed one hundred and sixty acres for any one person or association of persons, so that locations thereafter to be made were to be limited to that number of acres, if the rules of the local district in which the claim was situated, would allow them to take so much. The provision was, that the claim should not *exceed* one hundred and sixty acres. From what would appear—that they were to conform with the local rules of the district, as to the extent of these claims, subject to this provision—they could not get more than one hundred and sixty acres, and they might be limited to less, if

the rules of the district so prescribed. In 1872 an act was passed which embraced the whole subject of lode and placer claims, and that was intended by Congress to comprehend both acts—the act of 1866 and this act of 1870—in respect to placer claims. By that act an individual claimant was not allowed to take more than twenty acres; he was limited to twenty acres as to the extent of his claim; but nothing was said as to the amount that could be taken by an association of persons, and, probably, the provisions of that act upon that question are still retained.

These provisions of the several acts of 1866, 1870 and 1872, have been embodied in the Revised Statutes, and so they are the law at the present time, and were the law at the time this patent was applied for, and when it was issued. Now, upon these several provisions to which I have referred, it is to be said that a patent for a claim since 1870 can in no case exceed one hundred and sixty acres—that is, for a single claim—and it cannot be so much except in the case of an association of persons. An association of persons may take one hundred and sixty acres; an individual claimant in the locations made since 1872 can have only twenty acres. I think I stated to you that in the Act of 1870, individuals and associations were put upon the same footing—that either might take one hundred and sixty acres—but when the act of 1872 went into force, an individual claimant was limited to twenty acres; and as nothing was said in that act as to the quantity to be taken by an association of persons, they might still take one hundred and sixty acres. So that, since 1872, the law has been that an individual claimant may have twenty acres, and an association of persons can have one hundred and sixty acres, and no more. Locations prior to 1870 must conform to the local laws of the district, because nothing is said in the Act of Congress as to the extent of a location prior to that date, and by the laws of the district, locations made prior to that time may be governed entirely. So that when this patent came to be introduced, for the purpose of showing whether it was upon a location made prior to 1870, we allowed the defendants to introduce the proceedings had in the land office, which show distinctly that the claim of Mr. Starr was based upon a number of locations—twelve or fifteen of them—some of twenty or thirty acres perhaps, and some of a less number of acres; and these locations were made from time to time, some prior to July 9, 1870, the date of the first act upon the subject, and some of them since that time up to 1877. And so it cannot be said that this patent issued upon a location made prior to July 9, 1870, but it is shown clearly that it was issued on the consolidation of several claims, some of them made prior to that time, and some since that time.

Now, upon that, if Mr. Starr was the owner of these claims, if he had obtained them by purchase, and they were valid and regular locations, he would, under the act, be required, if he desired to obtain a patent for them, to make the application for each one of them, to post the notice as required by the statute, and give the notice by publication, and file his plat and survey, and do all those things which are required in the several claims, upon each one of them. And if he had done so, and his right had been supported as to all of them, and the patent had been issued for all these claims and each of them, described in the patent, there would have been no objection to the patent; but

it was not competent for him to consolidate these claims and put them all in as one claim, and upon notice given as one claim, and publication as one claim, and proceeding throughout as one claim, embracing one hundred and sixty acres. It is to be said that the officers of the land department had no authority in law to proceed in that way; therefore, the patent upon which the plaintiff relies is *void, and their title fails.*

Now, upon another question which is in the case, and would be contested if this one, which I have submitted to your consideration, were not decisive: If the plaintiff purchased this land at the time when there was no town upon it, and for the purpose of its organization, it cannot be regarded as an objection to the patent that it is now occupied for town purposes. The question is, whether the plaintiff, being a corporation, is competent to hold property of this kind, that is in use for town purposes; and the position assumed by the defendants is, that the plaintiff, being a corporation for the purpose of smelting and refining ores, organized for that purpose, it has no right to deal in town property. That, as a general proposition, is correct; but it appears here in evidence that the property was purchased before any town was located upon it, and that it was purchased for the use of the corporation; and whether they got less or more than was necessary for their use, if it was bought for the purpose of carrying on the business of the corporation, the title of the plaintiff is complete, and the plaintiff, in making its purchase, was not bound to confine itself to what was necessary for its use at that time, but could purchase a quantity more than enough for its present use. If that was done, no objection could be raised as to its title at least; that is to say, as to the quantity of land here mentioned. I suppose there are works in this country which cover a great deal more than thirty acres; it would not be difficult to point them out. We have such in mind: so that it cannot be said that as to the quantity of land, if it was bought for the use of the corporation, and with the intention of locating their works upon it, that it was excessive; and having bought it for a legitimate purpose, if, afterwards, they found it necessary, or expedient, or desirable to sell a portion of it, whether for the use of the town, or otherwise, is immaterial; their title in the property being good and valid, no question can now be raised in respect to it.

But that is not the controlling question for present consideration. The question in the first instance is as to whether the plaintiff has any title to this property, and on that question the law has decided against them.

In the same Court, on the same day, in the suit of the St. Louis Smelting and Refining Company *vs.* Mrs. Sarah Ray *et al.*, in ejectment, the Judge charged the jury as follows:

"We have come to an understanding about the law in this case, which will relieve you from any attentive consideration of the evidence. The plaintiff brings this action against the defendants to recover certain lots in the town of Leadville, and of course, assuming the affirmative in relation to that matter, the defendants being in possession of the property, and resisting the plaintiff's claim, it is upon the plaintiff to show title to the property by a preponderance of evidence. Upon that point, the plaintiff has introduced a patent issued to one Thomas

Starr for a placer claim, covering 164.61 acres, and upon that a question is presented as to whether a patent for so much land can be issued under the laws of Congress as they now stand, to one person. Upon examining the law we find, in the first place, that an act was passed July 9, 1870, the first one passed by Congress giving authority to obtain title from the government for placer claims, and in that act it was provided, in the way of an amendment to a previous act which had been passed, respecting lode claims, that persons having a right to such could obtain title thereto under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; and it was provided in the same section of the act that no location of a placer claim hereafter shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys. That clause of the act put individuals and associations of persons upon the same footing; that is to say, subject to the local rules of the different mining districts, they could obtain a title for one hundred and sixty acres of land as a placer claim, if the local rules would admit of their taking so much.

If the local rules restricted them to a less quantity, then they would have to conform to the local rules. The provision is, that the claim shall not exceed one hundred and sixty acres; it may be smaller if the local rules so provided, and the provision, as you may have noticed, as I gave it to you in the first place, is, that they may obtain the entry and patent under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims. Now, an act of Congress was passed in 1866, prescribing the conditions upon which a title could be obtained for lode claims; that is to say, the applicant was required to make a diagram of the claim, showing the extent of it upon the surface of the ground, so as to include the top or apex of the lode; he was required to post a notice upon that claim for a certain length of time, and publish a notice in a newspaper of his application; to file his diagram in the local land office, and perhaps do other things which I need not enumerate. This was for the purpose of giving notice to persons who might have a claim to the property adverse to the applicant, that they might come in and go before the local officers, for the purpose of showing their right, and if they came in and filed what was called an adverse claim, that is to say, another claim to the same property, that the parties would be required to go into court (some court of competent jurisdiction), and there litigate the matter in issue between them; that is to say, by a suit regularly brought in court and tried by a jury. They would determine the controversy which had arisen between them in regard to the title of the property, and the successful party to that suit was to be entitled to receive a patent from the government. In 1872 another act was passed upon that subject, which was somewhat different from that of 1866, but so far as it relates to the matters we have under consideration at this time, we may say that it was substantially the same. It required that the persons desiring to obtain a patent for land claimed for mining purposes, should file an application for patent, a plat and field-notes of the claim, in the local land office, and should post a copy of the plat, together with a notice of his application, upon the claim, and should

publish a notice of his application, and so on, in order to give to other claimants, who might have some right to the property, an opportunity to come in and show their right, and contest with him the question of ownership if they desired to do so. And that act contains similar provisions in respect to placer claims also; provisions which, in part, were designed to take the place of that of 1870, to which I have called your attention, and I believe that it does not wholly repeal the act of 1870, and perhaps it left some of the provisions of that act still in force.

But taking the two acts together, the act of 1870 and the act of 1872, it is to be said that it was required of a claimant for a placer mine that he should post a notice upon his claim, and that he should give notice by publication, and that he should show that improvements had been made upon the claim, as required by the act of 1872. And that law was in force at the time that this patent was applied for, at the time it was issued, and is still in force. So that it has become a question whether the patent, which is before you, was issued in accordance with the provisions of law. Now, upon that we have to say that it was not; because, as we have ascertained from an examination of the patent, and from some of the testimony that has been received with it, testimony of the proceedings in the land office, this was an application made since the year 1870, since this act was passed, upon several claims, (twelve or fifteen, perhaps, was the number,) and those claims are all embodied in this one claim, which is described in the patent; the application appears to have been made as for one claim, and embodying twelve or fifteen locations that were made at different times, from perhaps 1865, or some time prior to the year 1870, up to the year 1877; and these were all embodied in one claim and one application, and the land office has issued a patent upon that for one claim. Now this, as we may say, was not in conformity with the acts of Congress.

If there were twelve or fifteen claims, it was incumbent upon the applicant, Mr. Starr, to show his right to each of these claims, to have each of them surveyed, to have the notice posted upon each, to give notice by publication, and take the same proceedings as to each one of the claims. If he had so done, it would be no objection that he had purchased some of them from the first locators, or from the grantees of the first locators, or that, perhaps, he had located others of them himself; we would not inquire how he had acquired the right to these several claims, if he had taken the steps which the law required of him, as to each one of them; but not having done that, having attempted to embody all of these claims in one application, and having made it substantially one claim, the proceeding was entirely irregular under the statute.

If it had appeared that this application was made for one claim located before the year 1870, in pursuance to the rules of California Mining District, then his application would have been regular, if the local laws of California Mining District, existing before the passage of this act of 1870, had provided that one person might hold so much as one hundred and sixty acres; if this claim had been taken according to the local rules at that time. then his application would have been regular and proper; but as I stated to you before, we have ascertained

that the application was not of that character, that there are a number of claims consolidated in one, or one application made upon all of these claims, for a quantity of land in excess of that which may be taken by one individual under these acts of Congress. For that reason we declare as a matter of law, that this patent is *void*, and upon that the plaintiff fails altogether.

Now, there is another question which was presented in the case, as to the power and authority of the plaintiff, being a foreign corporation, to hold this land.

It was alleged on the part of the defendants that the plaintiff, being a foreign corporation, and being organized for the purpose of reducing ores, in its name a smelting and refining company, could have no authority to hold lands other than for the purpose for which it was created. That is to say, that it might buy lands necessary for its use in erecting its smelting works, all that should be required for carrying on its business; but whenever it should exceed that limit and acquire more land than was necessary for its purpose, it was beyond the power conferred upon it in its certificate of organization. And that, as a general proposition, is true. A corporation, created for a certain purpose, must confine itself to the matter for which it was created; but it would seem, from what is shown here in evidence, that this corporation purchased these lands before the town of Leadville grew up, when it was vacant and unoccupied—purchased it in the year 1877 from this Mr. Starr, who subsequently got a patent for it, about which we have been talking, and for its use as a smelting company, and that it has erected works upon some part of the land. Now, if that be true, if these are the facts, we should not be able to say that it was beyond the power of the corporation to get land for that purpose; and though it may have been something more than was, perhaps, required for its use at that time, getting a tract of thirty acres, or thirty-one acres—something like that—from Mr. Starr, yet we would not look very closely into that matter. If they could make a more judicious purchase of thirty-one acres than of a less quantity, it would be proper for them to do so; so that if they did not then know precisely what the requirements of their business would be, and purchased so much with the reasonable expectation that it might become of use thereafter for the purpose of a smelting and refining company, that would be regular also; and having purchased it for a legitimate purpose—purchased it for the purposes of its organization, and the use for which the company was created—if they afterwards found that they had no use for a part of it, and sold a portion of it, that would be perfectly regular. And they could sell it for any purpose for which they could find a purchaser, as for use as a town lot, or in any other manner. They were not bound to direct the use which a purchaser should make of it.

So far as that matter has gone, upon the evidence that we have heard, the law would be with the plaintiff. But upon what I have said to you in respect to this patent, and its invalidity, we find no title whatever in the plaintiff for this tract of land; and, therefore, it has become your duty, gentlemen, to return a verdict for the defendants.

SUPREME COURT OF THE UNITED STATES.

No. 1,042.—OCTOBER TERM, 1876.

Charles Forbes, Appellant, *vs.* Thomas Gracey, Consolidated Virginia Mining Company, John W. Mackay, and James G. Fair.	Appeal from the Circuit Court of the United States for the District of Nevada.

1. *Extracted Ore is Personal Property, and Taxable.*—Although the title to mineral lands may remain in the United States, the ores, when dug or detached from the lands under a mining claim, are free from any lien, claim or title of the United States, and, becoming personal property, are, as such, subject to State taxation in like manner as other personal property.
2. *Section 6, Act of February 28, 1871, of Nevada Legislature, Construed—Mines and Mining Claims Distinguished.*—The words "mines or mining claims" in the sixth section of the act of the legislature of Nevada of February 28, 1871, imposing a tax upon such ores, and making it "a lien on the mines or mining claims from which the ores or minerals bearing gold or silver are extracted for reduction," were evidently intended to distinguish between cases in which the miner is the owner of the soil, and therefore has a perfect title to the mine, and those in which he works under a mining claim, the title to the land remaining in the United States. In the first case, the tax is a valid lien on the mine itself; but in the second, only upon his possessory right, under existing laws and regulations, to work and explore the mine. Such a claim is property in the fullest sense of the word. It is subject to a lien for taxes, and may be sold for non-payment of them, without infringing the title of the United States. (4 Otto 762.)

Mr. Justice Miller delivered the opinion of the court.

This was a suit brought by appellant to enjoin the collector of taxes for Storey county, Nevada, from collecting a tax imposed by the law of that State upon the property of the Consolidated Virginia Mining Company, the appellant being a stockholder in the company and an alien subject of the Queen of Great Britain. The tax is by the State statute imposed upon the proceeds of the mine worked by the corporation, and is resisted on the ground that the title to the land from which the mineral is taken is in the United States, and it is not for that reason liable to State taxation.

The case is prepared and submitted to us on printed argument in the very last days of the term, and we are urged to decide it on the ground that it involves a question of vast interest to all the mining operations in the Pacific States, and is of vital importance to the State of Nevada, as it affects her largest source of revenue. In view of its importance, we should postpone the decision until next term, if the questions presented were either doubtful or difficult of solution. We think a very few words—all we can give to the subject at this late day—will show that it is neither.

It is very true that Congress has by statutes and tacit consent permitted individuals and corporations to dig out and convert to their own use the ores containing the precious metals, which are found in the lands belonging to the government, without exacting or receiving any compensation for those ores, and without requiring the miner to buy or pay for the land. It has gone further, and recognized the possessory rights of these miners as ascertained among themselves by the rules which have become the laws of the mining districts as regards mining claims.—(See Revised Statutes, Title xxxii., chap. six, secs. 2,318 to 2,352.) But in doing this it has not parted with the title to the land, except in cases where the land has been sold in accordance

with the provisions of the law on that subject. If the tax of the State of Nevada is in point of fact levied on this property right of the United States, we are bound by our previous decisions and by sound principle to hold that it is void. If, on the other hand, it is levied on property of the miner, and may be collected without affecting or embarassing the title of the United States to property which belongs to that government, then there is no ground for interference with the processes of the State in its collection. A few extracts from the statute of Nevada, showing the nature and character of the property on which the contested tax is imposed, and the manner of its enforcement and collection, will enable us to decide whether it belongs to the one or the other of these classes. We copy here the important sections of the Act of February 28, 1871, imposing this tax.

"SECTION 1. All ores, tailings, and mineral-bearing material of whatever character, shall be assessed for purposes of taxation for state and county purposes in the following manner: From the gross yield, return, or value of all ores, tailings, or mineral-bearing material of whatever character, there shall be deducted the actual cost of extracting said ores as minerals from the mine, the actual cost of saving said tailings, the actual cost of transportation of said ores, mineral-bearing material, or tailings, to the place of reduction or sale, and the actual cost of such reduction or sale, and the remainder shall be deemed the net proceeds, and shall be assessed and taxed as provided for in this act: *Provided*, That in no case whatsoever shall the whole amount of deductions allowed to be made in this section from the gross yield, return, or value of said ore, mineral-bearing material or tailings, exceed the percentage of gross yield, value, or return of such ore, mineral, or tailings, as hereinafter specified; on all ores, tailings, or mineral-bearing material the gross yield or value of which is twelve dollars per ton or less, the whole amount of deductions shall not exceed ninety per cent. of such gross yield, return or value; on all ores, tailings, or mineral-bearing material the gross yield, value or returns of which is over twelve and under thirty dollars per ton, the whole amount of deductions shall not exceed eighty per cent of such gross yield, value, or return; on all ores, tailings, or mineral-bearing material the gross yield, return, or value of which is over thirty dollars and less than one hundred dollars per ton, the whole amount of deductions shall not exceed sixty per cent. of such gross yield, value or return; on all ores, tailings, or mineral-bearing material the gross yield, return or value of which is one hundred dollars per ton or over, the whole amount of deductions shall not exceed fifty per cent. of such gross yield, return or value: *Provided*, That an additional exemption of fifteen dollars per ton may be allowed on all ores, tailings, or minerals worked by the Freiberg process.

"SEC. 2. It shall be the duty of the several county assessors within this state to compare and complete quarterly, on or before the second Monday in February, May, August, and November in each year, a tax list, or assessment roll, of the proceeds of the mines, alphabetically arranged, in a book furnished them by the board of county commissioners for that purpose, in which book shall be listed or assessed the proceeds of all mines in their respective counties, as provided in this act."

"SEC. 6. Every tax levied under the authority or provision of this act, on the proceeds of the mines is hereby made a lien on the mines or mining claims from which ores or minerals bearing gold or silver, or either, or any other valuable metal are extracted for reduction, which lien shall attach on the first days of January, April, July, and October of each year, for the quarter year commencing on those days respectively; and shall not be satisfied or removed until the taxes, as provided in this act, on the proceeds of the mines, are all paid, or the title to said mines or mining claim is absolutely vested in a purchaser, under a sale for the taxes levied on the proceeds of such mines or mining claims."

"SEC. 10. The collection of the tax authorized to be levied under this act shall be enforced in the same manner in which the tax on any other kind of personal property is enforced and collected."

What this manner of enforcement is, is to be found in Sec. 110 of a previous statute, which reads as follows:

"At any time while the assessment roll of any quarter is in the hands of the assessor for collection, the assessor may seize upon the personal property, or so much thereof as may be sufficient to satisfy the taxes and costs, of any person, firm, corporation, association, or company, who shall neglect or refuse to pay such taxes for one week after such demand of the assessor or his deputy, and shall post a notice of such seizure, with a description of the property, and the time and place whereon it will be sold, in three public places in the township or precinct where it is seized, and shall at the expiration of five days proceed to sell at public auction, at the time and place mentioned in the notice, to the highest bidder for cash, a sufficient quantity of such property to pay the taxes and costs incurred."

From the first section of the statute we ascertain what it is that is taxed, namely, all the ores, tailings, or mineral-bearing material of whatever character, after deducting the actual cost of extracting said ores as mineral from the mines and other expenses, such as transporting them to the place of reduction, etc.

From this it is clear that it is the ore after it has been separated from the bed in which it is found, and its proceeds and products, which are taxed, and not the ore or mineral in the earth. Indeed, this latter idea is not advanced by any one, and it would be preposterous.

As we construe the statutes of the United States and the recognized rule of the government on this subject, the moment this ore becomes detached from the soil in which it is embedded, it becomes personal property, the ownership of which is in the man whose labor, capital, and skill has discovered and developed the mine and extracted the ore or other mineral product. It is then free from any lien, claim, or title of the United States, and is rightfully subject to taxation by the State, as any other personal property is.

The truth of this proposition is too obvious to need or admit of illustration or elaboration, and, as we have already said, the pressure of business does not admit of it.

In regard to the taxing of this personal property, and the mode of collecting it by sale as provided in the section last cited, it does not seem to us that there can be any reasonable ground for asserting that the United States has any interest in the tax or in the sale of the

property taxed. It is, however urged with more show of reason that section six, which makes this tax "a lien on the mines or mining claims from which the ores or minerals bearing gold or silver are extracted for reduction," is an interference with the right of property of the government in the lands in which the mineral remains unextracted.

An examination of the language we have quoted will show that it was carefully prepared to avoid this objection, and we think it does.

The use of the words "mines or mining claims" is evidently intended to distinguish between the cases in which the miner is the owner of the soil, and therefore has perfect title to the mine, and those in which the miner does not have title to the soil, but works the mine under what is well known in the mining districts, and what is, as we have said, recognized by the act of Congress, as a mining claim. In the first case, the statute makes the tax a lien on the mine, because the title to the mine is in the person who owes and should pay the tax. In the other, the tax is a lien only on the claim of the miner; that is, on his possessory right to explore and work the mine under the existing laws and regulations on the subject.

In the former case, of course, the United States has no interest to be protected, and the state is at liberty to declare and enforce such a lien for her taxes. In the latter, also, such right as the mining laws allow and as Congress concedes to develop and work the mines, is property in the miner, and property of great value. That it is so is shown most clearly by the conduct of the mining corporation, in whose interest this suit is brought, which, for the purpose of evading this tax, permits its investment in this mine, said to be worth from fifty to a hundred millions of dollars, to rest on this claim, this mere possessory right, when it could, at a ridiculously small sum compared to the value of the mine, obtain the government's title to the entire land, soil, mineral and all. Those claims are the subject of bargain and sale, and constitute very largely the wealth of the Pacific coast states. They are property in the fullest sense of the word, and their ownership, transfer, and use are governed by a well-defined code or codes of law, and are recognized by the states and the federal government. This claim may be sold, transferred, mortgaged, inherited, without infringing the title of the United States. Why may it not also be made subject to a lien for taxes, and the claim, such as it is, recognized by statute, be sold to enforce the lien? We see nothing in principle or in any interest which the United States has in the land, to prevent it.

We are of the opinion that the decree of the circuit court dismissing the bill of appellant on demurrer was right; it is therefore affirmed.

Mr. Justice Field took no part in the decision of this case.

SUPREME COURT OF THE UNITED STATES.

NO. 199.—OCTOBER TERM, 1878.

S. Jennison, Executor of R. B. Titcomb, *vs.* J. T. Kirk.	Error to the Supreme Court of California.

1. The ninth section of the Act of Congress of July 26, 1866, "granting the right of way to ditch and canal owners over the public lands, and for other purposes," enacted: "That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts,

the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals, for the purposes aforesaid, is hereby acknowledged and confirmed: *Provided, however*, that whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage;" *Held*, 1st, that this section only confirmed to the owners of water-rights and of ditches and canals on the public lands of the United States the same rights which they held under the local customs, laws, and decisions of the courts, prior to its passage: and, 2d, that the proviso conferred no additional rights upon the owners of ditches subsequently constructed; but simply renders them liable to parties on the public domain whose possessions may be injured by such construction.

2. The origin and general character of the customary law of miners stated and explained.

3. By that law the owner of a mining claim and the owner of a water-right in California hold their respective properties from the dates of their appropriation, the first in time being the first in right; but where both rights can be enjoyed without interference with or material impairment of each other, the enjoyment of both is allowed.

4. By that law a person cannot construct a ditch to convey water across the mining claim of another, taken up and worked according to that law before the right of way was acquired by the ditch owner, so as to prevent the further working of the claim in the usual manner in which such claims are worked, nor so as to cut off the use of water previously appropriated by the miner for working the claim, or for other beneficial purposes.

5. Accordingly, where the owner of a mining claim worked by the method known as "the hydraulic process," cut and washed away a portion of a ditch so as to let out the water flowing in it, the ditch having been so constructed across the claim previously acquired as to prevent it from being further worked by that method, and to prevent the use of water previously appropriated by him; *Held*, that the cutting and washing away of the ditch, it having been done in order that the claim might be worked and the water used as before, was not an injury for which damages could be recovered.

The facts are stated in the opinion of the court. Mr. B. Myres for the plaintiff in error, no one appearing for the defendant in error.

Mr. Justice Field delivered the opinion of the Court.

In 1873, the plaintiff's testator constructed a ditch or canal in Placer county, California, to convey the waters of a cañon and of tributary and intermediate streams, to a mining locality known as Georgia Hill, distant about seventeen miles, for mining, milling, and agricultural purposes, and for sale. The ditch was completed in December of that year, and immediately thereafter the waters of the canon were turned into it. The ditch had a capacity to carry a thousand inches of water, and it is alleged that during the rainy season of the year in California, which extends from about the first of November to the first of April, the cañon, tributaries, and intermediate streams would supply that quantity, and during the dry season not less than one hundred inches. The intention of the testator, as declared on taking the initiatory steps for their appropriation, was to divert two thousand inches of the waters by means of a flume and ditch.

In its course to Georgia Hill, the ditch crossed a gulch or cañon in the mountains known as Fulweiler's gulch, the waters of which had been appropriated some years before by the defendant, who had constructed ditches to receive and convey them to a reservoir, to be used as needed. One of these ditches in the gulch was intersected by the ditch of the testator, and the waters which otherwise would have flowed in it were diverted to his ditch. The defendant thereupon repaired and re-opened his own ditch, turning into it the waters which had previously flowed in it, and, in so doing, cut and washed away a

portion of the ditch of the testator, so as to let out the waters brought down from the cañon above and from the intermediate streams. It is for alleged damages thus caused to the testator, and to restrain the continuance of the alleged injury to his ditch, and any interference with its use, that the present action was brought.

The defendant not only justified the cutting of the testator's ditch in the manner stated, because necessary for the repair and re-opening of his own ditch, and to retain the waters of the gulch previously appropriated and used by him, but on the further ground that the ditch of the testator traversed mining claims owned many years before by him, or those through whom he derived his interest, and would prevent their being successfully worked.

It appears from the answer, which the court finds to be correct in this particular, that for many years prior to this action, the defendant, or his grantors and predecessors in interest, had been in the possession of a portion of Fulweiler's gulch, extending from a point about 1,200 feet below the crossing of the testator's ditch to a point about 1,200 feet above it, including the bed of the gulch and fifty feet of its banks, on each side; that during this period the ground was continuously held and worked for mining purposes, and as a mining claim, in accordance with the usages, customs, and laws of miners in force in the district; that in working the claim and extracting the gold, the method employed was what is termed "the hydraulic process," by which a large volume of water is thrown with great force through a pipe or hose upon the sides of the hills, and the gold-bearing earth and gravel are washed down, and the gold so loosened that it can be readily separated; and that the ditch of the testator traversed the immediate front and margin of this gold-bearing earth and gravel, rendering the same inaccessible from the outlets of the gulch, down which they would be washed, thus practically destroying, if allowed to remain, the working of the mining ground.

On the argument it was admitted that the defendant's right of way for his ditch was superior to the testator's right of way for the one owned by him, being earlier in construction, and the waters of the gulch being first appropriated; and, therefore, that the duty rested upon testator, and since his death upon his executor, to so adjust the crossings of the ditches as not to interfere with the full use and enjoyment, by the defendant, of his prior right. It was contended that such crossings had been so adjusted by the testator, but were destroyed by the defendant.

It was also admitted that the extension of the testator's ditch, at the place where it was constructed across the claim of the defendant, prevented the successful working of the claim; but as the land over which the ditch passed, and on which the claim is situated, is a portion of the public domain of the United States, it was contended that the right of way for the ditch was superior to the right to work the claim; and that such superior right was conferred by the ninth section of the act of Congress of July 26th, 1866. That section enacted: "That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners

of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals, for the purpose aforesaid, is hereby acknowledged and confirmed: *Provided, however*, that whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage." (14 Stat. 253.)

There are some verbal changes in the section as re-enacted in the Revised Statutes, but none affecting its substance and meaning. Revised Statutes, Section 2339.

The position of the plaintiff's counsel is, that of the two rights mentioned in this section only the right to the use of water on the public lands, acquired by priority of possession, is dependent upon local customs, laws, and decisions of the courts; and that the right of way over such lands, for the construction of ditches and canals, is conferred absolutely upon those who have acquired the water-right, and is not subject in its enjoyment to the local customs, laws and decisions. This position, we think, cannot be sustained. The object of the section was to give the sanction of the United States, the proprietor of the lands, to possessory rights, which had previously rested solely upon the local customs, laws and decisions of the courts, and to prevent such rights from being lost on a sale of the lands. The section is to be read in connection with other provisions of the act of which it is a part, and in the light of matters of public history, relating to the mineral lands of the United States. The discovery of gold in California was followed, as is well known, by an immense immigration into the state, which increased its population, within three or four years, from a few thousand to several hundred thousand. The lands in which the precious metals were found belonged to the United States, and were unsurveyed, and not open, by law, to occupation and settlement. Little was known of them further than that they were situated in the Sierra Nevada mountains. Into these mountains the emigrants, in vast numbers, penetrated, occupying the ravines, gulches and cañons, and probing the earth in all directions for the precious metals. Wherever they went, they carried with them that love of order and system and of fair dealing which are the prominent characteristics of our people. In every district which they occupied they framed certain rules for their government, by which the extent of ground they could severally hold for mining was designated, their possessory right to such ground secured and enforced, and contests between them either avoided or determined. These rules bore a marked similarity, varying in the several districts only according to the extent and character of the mines, distinct provisions being made for different kinds of mining, such as placer mining, quartz mining, and mining in drifts or tunnels. They all recognized discovery, followed by appropriation, as the foundation of the possessor's title, and development by working as the condition of its retention. And they were so framed as to secure to all comers, within practicable limits, absolute equality of right and privilege in working the mines. Nothing but such equality would have been tolerated by the miners, who were emphatically the law-makers, as respects mining, upon the public

lands in the state. The first appropriator was everywhere held to have, within certain well-defined limits, a better right than others to the claims taken up; and in all controversies, except as against the government, he was regarded as the original owner, from whom title was to be traced. But the mines could not be worked without water. Without water the gold would remain forever buried in the earth or rock. To carry water to mining localities, when they were not on the banks of a stream or lake, became, therefore, an important and necessary business in carrying on mining. Here, also, the first appropriator of water to be conveyed to such localities for mining or other beneficial purposes, was recognized as having, to the extent of actual use, the better right. The doctrines of the common law respecting the rights of riparian owners were not considered as applicable, or only in a very limited degree, to the condition of miners in the mountains. The waters of rivers and lakes were consequently carried great distances in ditches and flumes, constructed with vast labor and enormous expenditures of money, along the sides of mountains and through cañons, and ravines, to supply communities engaged in mining, as well as for agriculturists and ordinary consumption. Numerous regulations were adopted, or assumed to exist from their obvious justness, for the security of these ditches and flumes, and the protection of rights to water, not only between different appropriators, but between them and the holders of mining claims. These regulations and customs were appealed to in controversies in the State courts, and received their sanction; and properties to the value of many millions rested upon them. For eighteen years, from 1848 to 1866, the regulations and customs of miners, as enforced and moulded by the courts, and sanctioned by the legislation of the State, constituted the law governing property in mines and in water on the public mineral lands. Until 1866 no legislation was had looking to a sale of the mineral lands. The policy of the country had previously been, as shown by the legislation of Congress, to exempt such lands from sale. In that year the act, the ninth section of which we have quoted, was passed. In the first section it declared that the mineral lands of the United States were free and open to exploration and occupation by citizens of the United States, and those who had declared their intention to become citizens, subject to such regulations as might be prescribed by law and the local customs or rules of miners in the several mining districts, so far as the same were not in conflict with the laws of the United States. In other sections it provided for acquiring the title of the United States to claims in veins or lodes of quartz-bearing gold, silver, cinnabar or copper, the possessory right to which had been previously acquired under the customs and rules of miners. In no provision of the act was any intention manifested to interfere with the possessory rights previously acquired, or which might be afterwards acquired; the intention expressed was to secure them by a patent from the government. The Senator of Nevada, Hon. Wm. M. Stewart, the author of the act, in advocating its passage in the Senate, spoke in high praise of the regulations and customs of miners, and portrayed in glowing language the wonderful results that had followed the system of free mining which had prevailed with the tacit consent of the government. The legislature of California, he said, had wisely declared that the rules

and regulations of miners should be received in evidence in all controversies respecting mining claims, and when not in conflict with the constitution or laws of the State or the United States, should govern their determination; and a series of wise judicial decisions had moulded these regulations and customs into "a comprehensive system of common law, embracing not only mining law, properly speaking, but also regulating the use of water for mining purposes." The miner's law, he added, was a part of the miner's nature. He had made it, and he trusted it and obeyed it. He had given the honest toil of his life to discover wealth, which, when found, was protected by no higher law than that enacted by himself under the implied sanction of a just and generous government. And the act proposed continued the system of free mining, holding the mineral lands open to exploration and occupation, subject to legislation by Congress and to local rules. It merely recognized the obligation of the government to respect private rights which had grown up under its tacit consent and approval. It proposed no new system, but sanctioned, regulated and confirmed a system already established, to which the people were attached.*

These statements of the author of the act in advocating its adoption cannot, of course, control its construction, where there is doubt as to its meaning; but they show the condition of mining property on the public lands of the United States, and the tenure by which it was held by miners in the absence of legislation on the subject, and thus serve to indicate the probable intention of Congress in the passage of the act.

Whilst acknowledging the general wisdom of the regulations of miners, as sanctioned by the State and moulded by its courts, and seeking to give titles to possessions acquired under them, it must have occurred to the author, as it did to others, that if the title of the United States was conveyed to the holders of mining claims, the right of way of owners of ditches and canals across the claims, although then recognized by the local customs, laws and decisions, would be thereby destroyed unless secured by the act. And it was for the purpose of securing rights to water, and rights of way over the public lands to convey it, which were thus recognized, that the ninth section was adopted, and not to grant rights of way where they were not previously recognized by the customary law of miners. The section purported, in its first clause, only to protect rights to the use of water for mining, manufacturing, or other beneficial purposes, acquired by priority of possession, when recognized by the local customs, laws, and decisions of the courts; and the second clause, declaring that the right of way for the construction of ditches and canals to carry water for those purposes "is acknowledged and confirmed," cannot be construed as conferring a right of way independent of such customary law, but only as acknowledging and confirming such rights as that law gave. The proviso to the section conferred no additional rights upon the owners of ditches subsequently constructed; it simply renders them liable to parties on the public domain whose possessions may be injured by such construction. In other words, the United States by the section said, that whenever rights to the use of water, by priority of

* *Cong. Globe*, 1st Session, 39th Cong., Part IV., pp. 3225-3228.

possession, had become vested, and are recognized by the local customs, laws, and decisions of the courts, the owners and possessors should be protected in them; and that the right of way for ditches and canals incident to such water rights, being recognized in the same manner, should be "acknowledged and confirmed;" but where ditches subsequently constructed injure, by their construction, the possessions of others on the public domain, the owners of such ditches should be liable for the injuries sustained. Any other construction would be inconsistent with the general purpose of the act, which, as already stated, was to give the sanction of the government to possessory rights acquired under the local customs, laws, and decisions of the courts.

This view of the object and meaning of the ninth section was substantially taken by the Supreme Court of California in the present case; it was adopted at an early day by the land department of the government, and the subsequent legislation of Congress, respecting mineral lands, is in harmony with it.*

By the customary law of miners in California, as we understand it, the owner of a mining claim and the owner of a water-right enjoy their respective properties from the dates of their appropriation, the first in time being the first in right; but where both rights can be enjoyed without interference with or material impairment of each other, the enjoyment of both is allowed. In the present case the plaintiff admits that it was incumbent upon the testator or himself to so adjust the crossing of the two ditches that the use of the testator's ditch should not interfere with the prior right of the defendant to the use of the water of the gulch; and it would seem that so far as the flow of the water was concerned this was done. Had there been nothing further in the case, the claim of the plaintiff would have been entitled to consideration. But there was much more in the case. The chief value of the water of the gulch was to enable the defendant to work his mining claim by the hydraulic process. The position of the testator's ditch prevented this working, and thus deprived him of this value of the water, and practically destroyed his mining claim. No system of law with which we are acquainted tolerates the use of one's property in this way, so as to destroy the property of another. The cutting and washing away of a portion of the testator's ditch, by the defendant, this having been done "in the exercise, use and enjoyment of his own water-rights in the usual and in a reasonable manner," as found by the court, and in order that his claim might be worked as before, was not, therefore, an injury for which damages could be recovered.

Judgment affirmed.

NOTE.—The customary law of miners, as stated in the opinion, is not applicable in California to controversies arising between them, or ditch owners, and occupants of the public lands for agricultural or grazing purposes. It has been the general policy of the State "to permit settlers in all capacities to occupy the public lands, and by such occupation to acquire the right of undisputed enjoyment against all the world but the true owner." (*Tartar vs. Spring Creek Co.*, 5 Cal. 398.) But at an early day an exception was made to this policy in cases where the interests of agriculturists and of

*Letter of Commissioner Wilson of November 23, 1869, Copp's U. S. Mining Decisions 24; Acts of Congress of July 9, 1870, and May 10, 1872, Revised Stats., title 32, chap. 6.

miners conflicted. By an act passed April 20, 1852, a right of action was given to any one settled upon the public lands for the purpose of cultivating or grazing, against parties interfering with his premises, or injuring his lands, where the same were designated by distinct boundaries, and did not exceed one hundred and sixty acres in extent; with a proviso, however, that if the lands contained mines of precious metals, the claim of the occupant should not preclude any persons desiring to do so from working the mines "as fully and unreservedly as they might or could do had no possession or claim been made for grazing or agricultural purposes."—(Statutes of 1852, p. 158.

Under this act the Supreme Court of the State held that miners, for the purpose simply of mining, could enter upon the land thus occupied, but that the act legalized what would otherwise have been a trespass, and could not be extended by implication to a class of cases not specially provided for. Accordingly, ditches constructed over lands thus held, without the consent of the occupant, though designed to convey water to mining localities for the purpose of mining, were held to be nuisances, and upon the complaint of the occupant were ordered to be abated.—*Stoakes vs. Barrett*, 5 Cal. 37; *McClinton vs. Bryden*, Ibid, 97; *Fitzgerald vs. Urton*, Ibid, 308; *Burge vs. Underwood*, 6 Id. 46; *Wermer vs. Lowery*, 11 Id. 104.

Since these decisions, there has been some legislation in the State, permitting water to be conveyed, upon certain conditions, across the lands of others. Such legislation, if limited to merely regulating the terms upon which possessory rights subsequently acquired on the public lands in the State may be enjoyed in the absence of title from the United States, may not be open to objection.

WATER RIGHTS ON THE PACIFIC COAST.

References in Atchison vs. Peterson. 20 Wall. 507.

Hill *vs.* Smith, 27 Cal. 476; Tyler *et al. vs.* Wilkinson *et al.*, 4 Mason 397; Irwin *vs.* Phillips *et al.*, 5 Cal. 140; Butte Canal & Ditch Co. *vs.* Vaughn, 11 Cal. 143; Ortman *et al. vs.* Dixon *et al.*, 13 Cal. 33; Lobdell *vs.* Simpson *et al.*, 2 Nevada 274.

References in Basey et al. vs. Gallagher. 20 Wall. 670.

Thorp *et al. vs.* Freed *et al.*, 1 Montana 693; Williams *vs.* Morland, 2 Barnewald and Cresswell 269; Liggins *vs.* Inge, 7 Bingham 692; Irwin *vs.* Phillips *et al.*, 5 Cal. 140; Bear River Co. *vs.* New York M. Co., 8 Cal. 327; Butte Canal Co. *vs.* Vaughn, 11 Cal. 143; McDonald *et al. vs.* Bear River Co., 13 Cal. 220; Phœnix Water Co. *vs.* Fletcher *et al.*, 23 Cal. 481; Hill *vs.* Smith, 27 Cal. 476; Lobdell *vs.* Simpson *et al.*, 2 Nevada 274; Ophir Mining Co. *vs.* Carpenter, 4 Nevada 534; Hobart *vs.* Ford, 6 Nevada 77; Dalton *vs.* Bowker, 8 Nevada 190; Ortman *et al. vs.* Dixon *et al.*, 13 Cal. 33; Davis *et al. vs.* Gale, 32 Cal. 26; Smith *vs.* O'Hara *et al.*, 43 Cal. 371; Woolman *et al. vs.* Garringer *et al.*, 1 Montana 535; Caruthers *et al. vs.* Pemberton *et al.*, 1 Montana 111; Thorp *vs.* Woolman, 1 Montana 168; Atchison *et al. vs.* Peterson *et al.*, 1 Montana 561; Tartar *vs.* Spring Creek Water and Mining Co., Supreme Court Cal. 1855, 5 Cal. 395.

SUPREME COURT OF THE UNITED STATES.

MORTON *vs.* NEBRASKA.

1. The policy of the government, since the acquisition of the Northwest Territory, and the inauguration of our land system, to reserve salt springs from sale, has been uniform. This policy has been applied to the "Louisiana Territory," acquired by us from France in 1803, and probably would apply to the Territory of Nebraska, on general principles. Whether or not it does apply, under the act of July 22, 1854, "to establish the offices of surveyor-general of New Mexico, Kansas and *Nebraska*," it applies at least so far as to render void an entry where the salines at the time had been noted on the field books, were palpable to the eye, and were not first discovered after entry.
2. Patents for land which has been previously reserved from sale, are void.
3. Where an act of Congress speaks of "vested rights," protecting them, it means rights lawfully vested. Hence, it does not protect a location made on public land reserved from sale.

Error to the Supreme Court of Nebraska.

Morton sued certain tenants of the State of Nebraska, in ejectment, to recover three hundred and twenty acres of salt land—*salines*—in

the said state; a state formed, as every reader of these volumes is aware, out of that vast region formerly known as the Territory of Louisiana, and purchased in 1803 by us from France. The land in question was palpably saline, so incrusted with salt as to resemble snow-covered lakes. The saline in question was noted on the field books, but these notes were not transferred to the Register's general plats. The state intervened in the suit, and by its own request was made a defendant.

The plaintiff based his title under locations of military bounty-land warrants at the land office in Nebraska City, in September, 1859. These warrants were issued by virtue of the Military Bounty Land Act of September 28, 1850, which declared that such warrants might be located at any land office of the United States, upon any of the public lands in such district *then subject to private entry*. The locators of the warrants, it appeared, before they made their entries, were told that the lands were salines. The State now set up that the locations were without authority of law, because the lands being saline lands were not subject to such entry.

The question thus was, whether, in Nebraska, saline lands were open to private entry; or, more strictly, whether they were so under circumstances such as those above stated.

It was not denied by the plaintiff that the practice of the Federal government, as exhibited by many acts of Congress (which being referred to in the opinion of the court, need not here, by the reporter, be particularized), from an early date had been to exclude this sort of land, with certain other sorts, from public sale generally. It had done so confessedly from the Northwestern Territory and from the Territory of Orleans, the now State of Louisiana. But the defendants conceived —and such was their position—that under the statutes regulating the matter in *Nebraska*, this was not so.

The matter was to be settled by certain acts of Congress, standing, perhaps, by themselves; or, if their language was not clearly enough applicable to the district of Nebraska by such acts, read by the light of the policy of the government and its numerous enactments on the main subject.

The first act which bore directly upon the matter was an act of March 3, 1811,* "providing for the final adjustment of claims to lands and for the sale of the public lands in the Territory of Orleans and Louisiana." This act created a new land district, and authorized the President to sell any surveyed public lands in the Territory of Louisiana, with certain exceptions named.

"And with the exception also of the *salt springs* and lead mines, and lands contiguous thereto."

Next came an act, approved July 22, 1854,† more immediately bearing on the matter: "An act to establish the offices of Surveyor-General of New Mexico, Kansas, and *Nebraska*, to grant donations to actual settlers therein, and for other purposes."

This was an act of thirteen sections, and, as its title shows, relating to three different Territories.

The first three sections related, without any question, exclusively to the Territory of New Mexico.

*2 Stat. at Large, 665, §10. †10 Id. 308.

The first of them authorized the appointment of a surveyor-general for *that* Territory, with the usual powers and obligations of such officers.

The second made a donation of a quarter-section of land to all white males residing in *it*, who had declared an intention, prior to January 1st, 1853, to become citizens; and also (on condition of actual settlement, etc.,) to every white male citizen above twenty-one years of age who should remove or have removed there between January 1st, 1853, and January 1st, 1858.

The third authorized a patent for *such* land to issue.

Then came in a fourth section, in these words:

"*None of the provisions of this act* shall extend to mineral or *school* lands, *salines*, military or other reservations, or lands settled on or occupied for purposes of trade and commerce, and not for agriculture."

This fourth section, as the reader will observe, does not in terms refer to the Territory of New Mexico, but says *none of the provisions of the act*, etc.

However, the fifth section enacts "that sections 16 and 36 in each township, shall be, and the same are hereby reserved for the purpose of being applied to schools in the *said Territory;* that is to say, the Territory of New Mexico; and the sixth reserves a quantity of land equal to two townships, for a university *there*.

The fourth section, therefore, as the reader will have noted, is interposed between sections which relate exclusively to the Territory of New Mexico; though it, itself, does not in terms so exclusively relate. The fifth sections also, as he will have noted, makes a reservation for schools; a matter which the fourth section in some way apparently had also legislated upon.

Then came a seventh section, enacting "that any of the lands not taken under the provisions of this act" are subject to the operation of the pre-emption act of 4th September 1841* [an act which by its tenth section authorizes certain persons to enter one hundred and sixty acres at the minimum price, and enacts: "That no lands on which are situated any known salines or mines shall be liable to entry under and by virtue of the provisions of this act."]

Section eight authorizes the surveyor-general to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and lands covered thereby are to be reserved from sale.

Section nine gives the Secretary of the Interior power to "issue all needful rules and regulations for fully carrying into effect *the several provisions of this act.*"

Then comes, for the first time, in section ten, a *specific* reference to Nebraska. This tenth section authorizes the appointment of surveyors-general for Nebraska and Kansas, with the usual powers and obligations of such officers. It authorizes them to locate their offices at certain places, etc.

The eleventh section directs surveys in the said Territories.

The twelfth subjects "all the lands to which the Indian title has been or shall be extinguished within said Territories of Kansas and Nebraska to the operation of the Pre-emption Act of 4th September,

* 5 Stat. at Large, 456.

1841;" the Pre-emption Act mentioned above in the seventh section. And the thirteenth makes two new land districts, authorizes for these two districts the appointment of registers and receivers, and concludes the statute with an enactment thus:

"And the President is hereby authorized to cause the surveyed lands to be exposed to sale, from time to time, *in the same manner* and upon the same terms *as the other public lands of the United States.*"

Whether, therefore, this section four, interposed as it is between sections relating exclusively to New Mexico, did, notwithstanding its general language, bear on the Territory of Nebraska, was one question raised by the plaintiff in the case, who denied that it did or could. He asserted that it meant "none of the *foregoing* provisions," etc.; that is to say, the provisions in section two about the *donation* of lands.

The State on the other hand, insisting that it did apply to the other two Territories mentioned in subsequent sections of the act, asserted also that whether it did or did not was unimportant, since by the twelfth the lands in Nebraska were subjected to the provisions of the Pre-emption Act of 1841, which exempted "all *known* salines;" within which class, as it happened, those in question came.

The State, however, relied also on two other acts, subsequent to that already set forth, of July 22, 1854. The acts were thus:

1. An act of the 3d of March, 1857,* "to establish three additional land districts in the Territory of Nebraska."

This act re-arranged the land districts of Nebraska, authorized the appointment of officers for them, and by one section enacted:

"That the President is hereby authorized to cause the public lands in said districts to—with the exception of such as *may have been or may be reserved for other purposes*—be exposed to sale in the same manner as other public lands of the United States."

2. An act of the 19th of April, 1864,† "to enable the people of Nebraska to form a constitution and State government, and for the admission of such State into the Union," etc.

This act enacts:

"Section 11. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use; the said land to be selected by the Governor thereof," etc.

Under this act (after the admission of Nebraska as a State into the Union), its Governor made a selection of twelve salt springs, the ones now in question being of the number.

This act, however, contained a proviso which the plaintiffs conceived covered the present case, and destroyed the value to the State (if it had any) of the main enactment. The proviso was thus:

"*Provided* that no salt spring or lands, the right whereof is now vested in any individual or individuals, shall by this act be granted to said State."

It may here be remarked that the plaintiffs had obtained certificates of entry for the lands in controversy, and patents for them had been issued. The patents were transmitted from the General Land Office at Washington to the local office in Nebraska.

* 11 Stat. at large, 186. † 13 Id. 47.

Before their delivery, however, the Commissioner of the General Land Office, ascertaining that the lands patented were saline lands, and not agricultural, recalled the patents, and cancelled the location.

The court below gave judgment for the State. From that judgment the other side brought the case here.

The case was thoroughly well argued by Messrs. Montgomery Blair and R. H. Bradford, for the plaintiff in error, and by Messrs. William Lawrence, and E. R. Hoar, contra, for the State or its tenants.

In behalf of the plaintiffs in error (plaintiffs also below), it was argued that the act of July 22d, 1854, though purporting to be one statute, and in form such, was obviously in fact two statutes; the first statute coming *to* the tenth section, and relating exclusively to New Mexico; the other, running from the beginning of that tenth section to the end of the thirteenth, and relating exclusively to Kansas and Nebraska. The case was the case of two separate bills, referring to distinct but cognate subjects tacked together, and passed through Congress as one statute; a very familiar case in the legislation of Congress, or of one bill where two cognate and distinct subjects were acted on in one bill; one subject in the first part and the other in the last. Viewing the statute in this light, the fourth section of the first act could not be made to overlap and cover any portion of the second act.

But if this were not the obvious history or character of the statute, the language of the fourth section is not the language of "reservation." The word "reserved" or "reservation" does not occur in it. The section was, therefore, to be confined to operating upon what immediately precedes it; that is to say, it was to be read as a prohibition upon the occupancy of the mineral, saline, and school lands of New Mexico, by settlers under the donation clause of the act contained in sections two and three preceding. New Mexico in 1854 was a distant, and, agriculturally considered, a sterile Territory; though one having very rich mines and salines. The object of Congress was to invite *agricultural* settlers into it. Donations of agricultural lands to such persons were requisite to secure this object; and even such donations hardly secured it.

But donations of the invaluable mineral lands and salines there were not at all requisite to invite thither the enterprising miner and saltmaker. These persons would go there if they could purchase at a private sale or lease the mines or salines. Congress, therefore, would have been without excuse in giving away *these* mines and salines.

The fourth section is, therefore, not to be regarded as a reservation at all, but as a provision withdrawing mines, salines, and the other sorts of land named in it, from the operation of the donation clauses preceding it.

Any other construction of the section makes the statute tautologous. The section, it will be noted, operates, in whatever way it does operate, on *school* lands as much as on salines. If it be taken as a reservation, operating over subsequent parts of the act—a reservation, generally, on school lands—then as to New Mexico it makes the identical enactment which is made in the fifth section. This, as to that act, is a *reductio ad absurdum*. While a similar sort of demonstration appears in regard to the Territories of Nebraska and Kansas, when you advert to the fact revealed by a reference to the statute book, that a previous

act,* the act of *May* 30, 1854, "to organize the Territories of Nebraska and Kansas," by sections sixteen and thirty-six, reserves school lands in almost identical language for *them*. †

The learned counsel argued further, that the proviso in the eleventh section of the act of April 11, 1864, was a plain recognition of a vested right—one made by its own patent—in the plaintiff.

They argued also that there having been no exhibition or evidence of salines apparent in the Receiver's general plats, no knowledge of any was properly fixed on the plaintiff, and that the patents having once passed the seals of the General Land Office at Washington, the subsequent revocation was void. The plaintiffs were thus possessed of a legal title, and had a right to recover in ejectment.

Mr. Justice Davis delivered the opinion of the court.

The policy of the government since the acquisition of the Northwest Territory and the inauguration of our land system, to reserve salt springs from sale, has been uniform. The act of 18th May, 1796,‡ the first to authorize a sale of the domain ceded by Virginia, is the basis of our present rectangular system of surveys. That act required every surveyor to note in his field-book the true situation of all mines, salt licks, and salt springs; and reserves for the future disposal of the United States a well-known salt spring on the Scioto River, and every other salt spring which should be discovered.

These reservations were continued by the act of May 10th, 1800,§ which created land districts in Ohio, with Registers and Receivers, and authorized sales by them; the preceding act having recognized the Governor of the Northwest Territory and the Secretary of the Treasury as the agents for the sale of the lands. And the same policy was observed when provision was made in 1804 for the disposal of the lands in the Indiana Territory (embracing what is now Illinois and Indiana).‖ It was then declared, "that the several salt springs within said Territory, with as many contiguous sections to each as shall be deemed necessary by the President, shall be reserved for the further disposal of the United States." Without referring particularly to the different acts of Congress on the subject, it is enough to say that all the salines in the Virginia cession were reserved from sale, and afterwards granted to the several States embraced in the ceded Territory. Congress, in the disposition of the public lands in the Mississippi Territory,¶ and in the Louisiana purchase, preserved the policy which it had applied to the country obtained from Virginia. Over all the Territory acquired from France the general land system was extended. The same rules which were prescribed by law for the survey and sale of lands east of the Mississippi River were transferred to this new acquisition.** At the first sale of lands in this region which the President was authorized to make, salt springs and lands contiguous thereto were excepted.†† And this exception was continued when, in 1811, a new land district was

* 10 Stat. at Large, 283, 289.

† The language is, in the case of each Territory:
"Sections numbered 16 and 36 in each township in said Territory, shall be and the same are hereby reserved for the purpose of being applied to schools in said Territory."

‡ 1 Stat. at Large, 464. § 2 Ib. 73. ‖ 2 Stat. at Large, 277.

¶ 2 Ib. 548; 3 Ib. 489. ** 2 Stat. at Large, 324. †† 2 Ib. 391.

created. Prior to this time no portion of the country north of the State of Louisiana had been brought into market. The Act of March 3d, 1811, authorized this to be done; but the President, in offering the lands for sale, was directed to except salt springs, lead mines, and lands contiguous thereto, which were reserved for the future disposal of the States to be carved out of this immense Territory, which included the preesnt State of Nebraska.* And so particular was Congress not to depart from this policy, that in giving lands, in 1815, to the sufferers by the New Madrid earthquake, every lead mine and salt spring were excluded from location. Indeed, in all the acts creating new land districts in the Territory now occupied by the States of Arkansas and Missouri, the manner of selling the public lands is not changed, nor is a sale of salines in any instance authorized. On the contrary, they incorporate the same reservations and exceptions which are contained in the act of March 3, 1811. In all of them the act of 18th May, 1796, is the rule of conduct for all Surveyors-General and their deputies, as the act of 10th May, 1800, is the rule for all Registers, requiring them to exclude from sale all salt springs, with the sections containing them.

In this State of the law of saline reservations, the Act of 22d July, 1854, was passed. It is by no means certain that the Act of March 3d, 1811, did not work the reservation of every saline in the Louisiana purchase; but without discussing this point, it is enough to say that the act of 1854 leaves no doubt of the intention of Congress to extend to the Territory embraced by the States of Kansas and Nebraska the same system that had been applied to the rest of the Louisiana purchase. There was certainly no reason why a long-established policy, which had permeated the land system of the country, should be abandoned. On the contrary, there was every inducement to continue, for the benefit of the States thereafter to be organized, the policy which had prevailed since the first settlement of the Northwestern Territory. In the admission of Ohio, and other States, Congress had made liberal grants of land, including the salt springs. This it was enabled to do by reserving these springs from sale. Without this reservation it is plain to be seen there would have been no springs to give away, for every valuable saline deposit would have been purchased as soon as it was offered for sale. An intention to abandon a policy which had secured to the States admitted before 1854 donations of great value, cannot be imputed to Congress unless the law on the subject admits of no other construction.

But the law of 1854,† instead of manifesting an intention to abandon this policy, shows a purpose to continue it. It was the first law under which lands were surveyed in Nebraska, offered at public sale, and so made subject to private sale by entry. By it surveyors-general for New Mexico, and for Kansas and Nebraska, were appointed, with the usual powers and duties of such officers. And although there are provisions relating to New Mexico applicable to that Territory alone, yet the leading purpose of this act was to bring into market, as soon as practicable, the lands of the United States in all of these Territories. In New Mexico this could not be done as soon as in Kansas, or Ne-

* 2 Stats. at Large, 665, § 10. † 10 Ib. 308.

braska, on account of the policy adopted of donations to actual settlers, who should remove there before the 1st of January, 1858, and because of the necessity of segregating the Spanish and Mexican claims from the mass of the public domain. For this reason, doubtless, local land offices were not created in New Mexico, but they were in Kansas and Nebraska, and Registers and Receivers appointed, with the powers and duties of similar officers in other land offices of the United States. And the President was authorized to cause the lands, when surveyed, to be exposed to sale, from time to time, in the same manner, and upon the same terms and conditions, as the other public lands of the United States.

If there were no other provisions in the law that we have enumerated, we should hesitate to say, in view of the limitation on sales prescribed by law wherever public lands had been offered for sale, that they did not of themselves work a reservation of the land in controversy. In conducting the public sales, the Register always reserved salines, as it was his duty to do, when marked on the plats; and this was never omitted except by the neglect of the surveyors-general or their deputies. But the fourth section of the act removes all doubt upon that subject. That section declares that none of the provisions of this act shall extend to mineral or school lands, *salines*, military, or other reservations, or lands settled on or occupied for the purposes of trade and commerce.

It is contended that this section applies to the donations, conceded in the preceding sections, to actual settlers in New Mexico. But why make this restriction? To do it would require the importation of the word (foregoing), so that the section would read, none of the (foregoing) provisions shall extend to salines or mineral lands. There is no authority to make this importation, and in this way subtract from the general words of the section. The language of the section is imperative, and leaves no room for construction. Besides, why should an intention be imputed to Congress to exclude actual settlers from saline lands, but leave them open to private entry by speculators. The legislation upon the subject of public lands has always favored the actual settlers, but the construction contended for would discriminate against them, and in favor of a class of persons whose interests Congress has never been swift to promote.

Apart from this, however, the purpose which Congress had in view is to be found in the unbroken line of policy in reference to saline reservations, from 1796 to the date of this act. To perpetuate this policy, and apply it equally to all the lands of the three Territories, was the controlling consideration for the incorporation of the section; and although the words of the section are loose and general, their meaning is plain enough when taken in connection with the previous legislation on the subject of salines. It cannot be supposed, without an express declaration to that effect, that Congress intended to permit the sale of salines in Territories soon to be organized into States, and thus subvert a long-established policy by which it had been governed in similar cases. If anything was needed to show that the fourth section did reserve salines from sales, it can be found in the act of 3d of March, 1857,* re-arranging the land districts in Nebraska. This

* 11 Stat. at Large, 186.

act excepts from sale such lands "as may have been reserved." This is a declaration that lands had been reserved, and obviously it is a legislative construction of the fourth section of the act of 1854, for nowhere else, except by implication, had there been reservations of any sort in the Territory of Nebraska.

Besides this, the Nebraska enabling act of April 10, 1864,* affords still further evidence that the act of 1854 was intended to reserve salines. The purpose of reserving them was to preserve them for the use of the future States, and no State had been organized without a grant of salt springs. In some of the States the grant was all within their boundaries, but on the admission of Missouri, and since, the number was limited to twelve. This number, with a certain quantity of contiguous lands, were granted to Nebraska on her admission. In doing this Congress must have assumed that the springs had been reserved from sale, for if this had not been done, the presumption is there would have been nothing for the grant to operate upon. It may be true, that lands only fit for agriculture will remain a long time unentered, but this would never be the case with lands whose surface was covered over with salt. It would be an idle thing to make a grant of such lands, if there had been a previous right of entry conceded to individuals. This was in the mind of Congress, and induced the reservation in the act of 1854, by means of which Nebraska could be placed on an equal footing with other States in like situation.

But it is said the locations in question are ratified by the proviso to the section granting the salt springs. This proviso was as follows: "Provided that no salt springs or lands, *the right whereof is now vested in any individual* or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall by this act be granted to said State." This provision, with an unimportant change in phraseology, was first introduced into the enabling act for Missouri,† and exactly similar provisions with the one in question were inserted in the acts relating to Arkansas and Kansas.‡ The real purpose of the proviso is to be found in the situation of the country embraced in the Louisiana purchase. The treaty of Paris of April 30, 1803, by which the "province of Louisiana" was acquired, stipulated for the protection of private property. This comprehended titles which were complete, as well as those waiting completion,§ and Congress adopted the appropriate means for ascertaining and confirming them. They were numerous and of various grades, and covered town-sites and every species of lands. In Missouri, as the records of this court show, they were quite extensive, and when she was admitted into the Union many of these titles were perfect, and still a large number imperfect.

In this condition of things Congress thought proper, in granting the salt springs to the State, to say that no salt springs, *the right whereof now is* or shall be confirmed or adjudged to any individual, shall pass under the grant to the State. Whether this legislation was necessary to save salt springs claimed under French treaty, is not important to determine; but manifestly it had this purpose in view, and nothing more. It could not refer to salt springs not thus claimed, because all

* 13 Stat. at Large 47.

† 3 Ib. 547, § 6.

‡ 5 Ib. 58; 12 Ib. 126.

§ Soulard *vs.* U. S., 4 Peters 511.

entry upon them was unlawful, on account of previous reservation. It speaks of confirmations which had been made and those which were awaiting governmental action, and in this condition were all the titles the United States were bound to protect.

Although the words employed in the first division of the proviso to the saline grant to Nebraska are not the same as those used in the Missouri grant, they mean the same thing. There can be no difference between a right which has been confirmed and one which is now vested. Both are perfect in themselves, and refer to completed claims, while the last division in each proviso has reference to claims in course of completion, but not finally passed upon. This proviso can have little significance in the enabling act of Nebraska, or indeed in many other enabling acts, but Congress doubtless thought proper to introduce it out of the superabundance of caution, as there could be no certainty that in purchased or conquered territory, however remote from settlement, there might not be private claims protected by treaty stipulations, to which it would be applicable. It cannot be invoked, however, for the protection of the plaintiffs. When a vested right is spoken of in a statute, it means a right lawfully vested, and this excludes the locations in question, for they were made on lands reserved from sale or entry. If Congress had intended to ratify invalid entries like these, they would have used the language of ratification. Instead of doing this, the language actually employed negatives any idea that Congress intended to give validity to any unauthorized location on public lands.

The Pre-emption Act of the 4th of September, 1841,* declares that "no lands on which are situated *any known* salines or mines shall be liable to entry;" differing in this respect from the acts of 1796 and 1854, which reserves every "salt spring," and "salines." The salines in this case were not hidden, as mines often are, but were so incrusted with salt that they resembled "snow-covered lakes," and were consequently not subject to pre-emption. Can it be supposed that a privilege denied to pre-emptors in Nebraska was conceded in the act of 1864 to persons less meritorious?

It appears by the record, that on the survey of the Nebraska country, the salines in question were noted on the field-book, but these notes were not transmitted to the Register's general plats, and it is argued that the failure to do this gave a right of entry. But not so, for the words of the statute are general, and reserve from sale or location *all* salines, whether marked on the plats or not.

What effect the statute might have on salines hidden in the earth, not known to the surveyor or locator, but discovered after entry, may become a question in another case. It does not arise in this. Here, the salines were not only noted on the field-books, but were palpable to the eye. Besides this, the locators of the warrants, before they made their entries, were told of the character of the lands. Indeed. it is quite clear that the lands were entered solely on account of the rich deposits of salt which they were supposed to contain.

It does not strengthen the case of the plaintiffs that they obtained certificates of entry, and that patents were subsequently issued on these

* 5 Stats. at Large, 456.

certificates. It has been repeatedly decided by this court that patents for lands which have been previously granted, reserved from sale, or appropriated, are void.* The executive officers had no authority to issue a patent for the lands in controversy, because they were not subject to entry, having been previously reserved; and this want of power may be proved by a defendant in an action at law.†

Judgment affirmed. (21 Wallace 660–675).

b. DIGEST OF COURT DECISIONS.

ABANDONMENT.

What Constitutes—Intention.—An abandonment can only take place where the occupant leaves the land free to the appropriation of the next comer, whoever he may be, without any intention to repossess or reclaim it for himself, and regardless and indifferent as to what may become of it in future. *Richardson vs. McNulty et al.* 24 Cal. 339.

Law and Fact—Assessment.—Abandonment is a mixed question of law and fact. If in fact, a person intend to give up his mining claim and quit paying assessments in pursuance of that intention, it is an abandonment in fact. *Oreamuno vs. Uncle Sam G. and S. M. Co.*, 1 & 2 Nev. 179; *Doak vs. Brubaker*, 1 Nev. 217; *Weill vs. Lucerne M. Co.* 11 Nev. 200.

Local Rules—Intention.—Abandonment in its common law sense is purely a question of intention. An abandonment takes place when the ground is left by the locator without any intention of returning or making any future use of it, independent of any mining rule or regulation. *St. John vs. Kidd*, 26 Cal. 263; *Mallett vs. U. S. M. Co.*, 1 Nev. 194.

Statements Showing Intention.—The sayings of a party alleged to have abandoned are evidence in his favor as disproving an intention to abandon. *Noble vs. Sylvester.*, 42 Vt. 146.

Evidence—Judgment Roll.—In an action to recover possession of a mining claim, where the defense is an abandonment of the claim by the plaintiff, the judgment roll in an action brought by the plaintiff against third parties to recover possession of the same ground, and in which plaintiff recovered judgment, is admissible in evidence to rebut the presumption of abandonment. *Richardson vs. McNulty et al.* 24 Cal. 339.

Statute of Limitations.—Lapse of time short of the statute of limitations is alone no proof of abandonment. *Mallett vs. Uncle Sam M. Co.* 1. Nev. 194; *Partridge vs. McKinney*, 10 Cal. 181.

Intention—Evidence.—As to support the plea of abandonment it must appear from the evidence that there was a leaving of the claim, without any intention of returning or making any further use of it, so it is competent for the opposite party to prove, in rebuttal, any acts explanatory of the leaving which tend to show that it was not accompanied with an intention not to return. *Bell vs. Bed Rock T. and M. Co.*, 36 Cal. 214.

Belief Before Entry.—In the trial of an issue as to whether mining ground had been abandoned by the plaintiff before the defendant's entry, the fact that the defendant *believed* the mine had been abandoned by the plaintiff when he entered is not to be taken into consideration by the jury in determining the issue. *Stone vs. Geyser Q. M. Co.* 52 Cal. 315.

Expenditure — Hostile Indians — Tools.—Where a party was driven away from his mine by hostile Indians, left his tools in an adjacent mine, and did not return prior to a second location by another party, for the reason that he supposed the Indian hostilities continued, because of the required expenditures of money, and because he believed he had done sufficient work upon the mine to hold it. *Held*, that there was not that intent necessary to constitute abandonment. *Morenhaut vs. Wilson.*, 52 Cal. 263.

Estoppel.—Evidence of matter in the nature of estoppel, as the acquiescence by silence in a sale of the premises by another, is not admissible in support of an allegation in abandonment. Estoppel is not an element in abandonment. *Marquart vs. Bradford*, 43 Cal. 526.

Changes in Location Notice—Question of Estoppel.—The changes as made in the notice of location after record, did not show any intention on the part of the locators of the Paymaster mine to abandon

* Polk *vs.* Wendell, 9 Cranch 99; Minter *vs.* Crommelin, 18 Howard 88; Reichart *vs.* Felps, 6 Wallace 160.

† Minter *vs.* Crommelin, *supra*.

it, and the facts of this case do not present any question of estoppel. *Gleeson vs. Martin White M. Co.*, 13 Nevada, 442.

Stopping Work.—Not to work a mining claim may be a circumstance of some weight, tending to show abandonment; and this abandonment of a claim, resting for validity only upon possession, may be sufficient to defeat the title. *McGarrity vs. Byington*, 12 Cal. 431.

Non-user.—The inference of abandonment of a right from *non-user* is not applicable to the case of mines. *Seaman vs. Vawdrey*, 16 Vesey 390.

Possession—Good Faith.—The question of abandonment can never arise, except where there has been possession, and then the question is simply, whether the possessor intended to return, and whether he intended to return in good faith or bad faith. *Stone vs Geyser Q. M. Co.*, 52 Cal. 315.

Vacancy in Possession.— When an abandonment takes, a vacancy in the possession is created, and without such vacancy no abandonment can take place. *Richardson vs. McAulty*, 24 Cal. 339.

Possession—Gift.— If the possession of the occupant be continued in another. by the expression of a wish or desire of the occupant to another that he succeed to the possession, and he thereupon takes possession, a gift is the result—there is no vacancy in the possession, and, consequently, no abandonment. *Idem.*

Statute of Limitations.— Abandonment may arise from a single act or a series of acts, and a party having once abandoned his claim, will not be permitted to come in within the time allowed for commencing civil actions to re-assert his right, or resume his claim, to the prejudice of those who may have in the meantime appropriated it. *Davis vs Butler*, 6 Cal. 511.

Sale—Gift.— The occupant may part with his interest by selling it, or giving it to another, or by any other mode authorized by law, or he may abandon it. *Idem.*

Failure to Work —The failure to perform the amount of work on a mining claim required by the local mining laws or regulations established and in force in the district where the claim is located, amounts to an abandonment of the claim, and thereupon it may be occupied and appropriated by another. *Depuy vs. Williams*, 26 Cal. 309.

Water and Tailings.—If miners engaged in washing their mining claims with water abandon the water and tailings which pass from their mining grounds, any other persons have a right to take and appropriate the same to their own use, and their right to the water and tailings is contingent on the fact of continual abandonment; but it does not become obligatory on the persons abandoning to continue to do so, even though other persons, encouraged by the circumstance of abandonment for a time, have incurred the expense of constructing flumes to use the water and tailings abandoned. *Dougherty vs. Creary*, 30 Cal. 290.

Tailings—How Indicated.—To suffer the tailings to flow where they list, without obstructions to confine them within the proper limit, is conclusive evidence of abandonment, unless there is some peculiarity in the locality constituting an exception to this rule. If no artificial obstruction is required to confine them within the proper limits, then none is necessary. *Jones vs. Jackson*, 9 Cal. 237.

Relocation—Inchoate Right Pending Development.—While holding possession for the purpose of making the development required by law, the locator's right to the lode is complete and it cannot be conveyed except by deed. It may, nevertheless, be lost by abandonment or by voluntarily yielding the possession to another, which is the same thing. And so if the locator admit another to the possession with him, this will amount to an abandonment *pro tanto*, and a retaking by the party admitted, upon which they will become interested in the lode, jointly or otherwise, according to the terms of their agreement. In these particulars the rule is the same when applied to the relocation of an abandoned claim. *Murley vs. Ennis*, 2 Col. 300.

Jury—Instructions of the Court.—Where the court instructed the jury that "where an abandonment is sought to be established by the act of the party, the intention alone governs; and if such party leave a mining claim, with the intention not to return, his abandonment is as complete, if it exist for a minute or a second, as though it continued for years; but if he left with the intention of returning, he might do so at any time within five years; provided, there was no rule, usage or custom of miners of such a notorious character as to raise a presumption of an intention to abandon;" *Held*, That the question of abandonment was fairly left to the jury. *Waring vs. Crow*, 11 Cal. 366.

Failure to Work and Notice.—If the local mining laws of a district provide that, on a failure to work and notice a claim as required by the mining laws, the claim shall be considered as abandoned, a failure to comply with such laws is an abandonment of the claim, and it is open to location as vacant ground. *Strang vs. Ryan*, 46 Cal. 33.

Pleadings—Evidence Admitted.—To an action for the possession of a mining claim, the defendant pleaded in defence, a forfeiture of the same by the plaintiffs, under the mining rules and regulations of the district embracing the claim. Certain testimony tended to prove that the plaintiffs, or their grantors, removed all tools and implements of mining, and had ceased to work the mine. The plaintiffs offered to prove that about nine months before suit brought, one W., on behalf of the defendant, offered to purchase of them said claim, and that they refused to sell. *Held*, first, that under the defendant's denial of plaintiffs' title, evidence of abandonment by plaintiffs was admissible; second, that as said evidence tended to prove abandonment, it was equally relevant under both defenses; and third, that as said testimony offered by the plaintiffs tended to disprove abandonment, it should have been received. *Bell vs. Red Rock T. and M. Co.* 36 Cal. 214. See *Harkness vs. Burton*, 39 Iowa 101.

Reclaim — Verdict of Jury. — In a question of abandonment with reclaim after defendant had found ore, the finding of a jury of the vicinage familiar with mining usages ought to be regarded as entitled to peculiar weight. Dillon J., in *Anderson vs. Simpson*, 21 Iowa 405.

Parties —An abandonment by one party does not inure to the benefit of another without appropriation on his part. *Pralus vs. Pacific G. and S. M. Co.*, 35 Cal. 35.

Legal Title.—The doctrine of abandonment only applies where there has been a mere naked possession without title. Where there is a title, to preserve it there need be no continuance of possession, and the abandonment of possession cannot affect the rights held by virtue of the title. *Ferris vs. Coover*, 10 Cal. 589.

The distinction between abandonment and forfeiture is stated in *Wiseman vs. McNulty*, 25 Cal. 230.

ADVERSE CLAIM.

Summons.—The notice required by the statute, to be given by the Register of the Land Office, as well as by the claimant, is in effect a summons to all adverse claimants. *Wolfrey vs. Lebanon M'g. Co.*, 4 Col. 112.

Possession.—A complaint (or bill in equity) by claimants in possession of a mining claim may be sustained against adverse claimants out of possession. *Houtz vs. Gisborn*, 1 Utah 173.

Subsequent Acts. — The rights of claimants of mining ground for which application for United States patent has been made, cannot be determined by acts subsequent to the filing of the adverse claim. *Moxon vs. Wilkinson*, 2 Mont. 421. See *Sears vs. Taylor*, 4 Colorado 38, for declaration in ejectment to support adverse claim under Colorado Practice Act. Also see *Golden Fleece Co. vs. Cable Consolidated Co.*, 12 Nevada 312.

ADVERSE POSSESSION.

(*See Possession*).

Ouster — Tenants in Common. — Open, notorious and uninterrupted possession of the whole by a tenant in common for twenty-one years, claiming the land as his own and taking the profits (by coal mining) exclusively, is evidence from which a jury may infer ouster and adverse possession. *Susquehanna Co. vs. Quick.*, 61 Pa. St. 328.

Sand Bank.—A valuable sand bank being exclusively and notoriously used by the defendant, who sold the sand and used it, this being the use to which the true owner of the land would naturally apply it meets all the requisites of a legal, adverse possession. *Ewing vs. Burnet.*, 11 Peters, 41.

Quarrying Stone.—Quarrying stone from time to time during a period of twenty-five years, on an uninclosed tract of fifty acres of wild land, with claim of title by deed during that time is a complete adverse possession. *Jackson vs. Olitz.*, 8 Wend. 440.

Taking Ore.—When ore has been, from time to time, taken generally from the lands of a large estate, without reference to any particular tract or the subdivisions of the land, the right of the disseisor so taking the ore cannot be beyond his *pedis possessio*. *Ege vs. Medlar*, 82 Pa. St. 86. See *Aiken vs. Buck*, 1 Wend. 467.

Quarrying—Statute of Limitations. —Where timber and quarry land was claimed by the owner of adjacent property, who leased the quarries for ten years, and continued afterward to procure stone and timber therefrom, or permitted others to do so, upon payment for the right, and during the time regularly paid the taxes upon the land, the claimant of the land was held to have maintained continued adverse possession. *Colvin vs. McCune*, 39 Iowa, 502.

AGENT.

Lode Claims Located by Agent.—Any citizen who is entitled to locate a lode on the public domain may perform all necessary acts of appropriation and development through the agency of others. *Murley vs. Ennis*, 2 Col. 300.

Possession of Locator.—If A. locates

a mining claim in the name of B., occupies and works on it, but uses B's name, and does all acts in his (B's) name, he cannot maintain any action for the claim in his own name. The law would consider his possession the possession of B. He could only acquire an independent right in the claim by abandoning the first location and relocating in his own name. His rights would date from second location. *Van Valkenburg vs. Huff*, 1 & 2 Nevada, 115.

The general doctrines of Principal and Agent apply to mining claims. See the following cases: *Cumberland Coal Co. vs. Sherman*, 30 Barb. 553; *Patterson vs. Keystone M. Co.*, 30 Cal. 360; *Hardenbergh vs. Bacon*, 33 Cal. 356; *Van Duzen vs. Star Q. M. Co.*, 36 Cal. 571; *Norris vs. Taylor*, 49 Ill. 18; *Atlas M. Co. vs. Johnston*, 23 Mich. 37; *Palmer vs. Williams et al.*, 24 Mich. 329; *Adams M. Co. vs. Senter*, 26 Mich. 73; *Herbert vs. King*, 1 Mont. 475; *Simons vs. Vulcan Oil Co.*, 61 Penn. St. 202; *Bell vs. Bell*, 3 West Va. 183; *Logan vs. Dils*, 4 West Va. 397; *Collins vs. Case*, 23 Wis. 231.

AGRICULTURAL CLAIM.

Reasonable and Necessary Use.—Miners have a right to enter upon public mineral land, in the ocupancy of others for agricultural purposes, and to use the land and water for the extraction of gold —the use being reasonable, necessary to the business of mining, and with just regard to the rights of the agriculturist. And this whether the land is enclosed, or taken up under the Possessory Act. *Clark vs. Duval*. 15 Cal. 85.

Priority of Possession.—Where the title of the respective parties to public mineral lands is based on possession alone, the older possession, as between the two, gives the better right; and this although the use to which the older possessor appropriated the land was for agricultural purposes, while the younger possession was for mining purposes. *Gibson vs. Puchta*, 33 Cal. 310. See *Smith vs. Doe*, 15 Cal. 101; *Gillan vs. Hutchinson*, 16 Cal. 154; *Rogers vs Soggs*, 22 Cal. 444; *Kupley vs. Welch*, 23 Cal. 453; *Wixon vs. Water Co.*, 24 Cal. 367.

ALIEN.

Location—Possession.—Aliens cannot locate nor hold mining claims. An alien who has never declared his intention to become a citizen, is not a qualified locator of mining ground, and he cannot hold a mining claim either by actual possession, or by location, against one who connects himself with the government title by compliance with the mining law. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nev. 312.

Joint Location by Citizen and Alien.—If a citizen and alien jointly locate a claim, not exceeding the amount of ground allowed by law to one locator, such location is valid as to the citizen, and a conveyance from both of such locators to a citizen, gives a valid title. *North Noonday M. Co. vs. Orient M. Co.*, 1 Federal Reporter, 522.

Location and Sale by Alien.—If in the attempt by an alien to locate a claim, he performs all the acts necessary to a valid location by a citizen, and then conveys such claim to a citizen, who takes possession and continues to perform all the conditions required by law to hold such claim, such citizen thereby acquires a valid title to the claim so located by an alien, as against all persons having acquired no right therein before such conveyance by the alien. *Id.*

How Naturalized, and Mode of Proof.—A foreign-born son of an alien, may become a citizen by being naturalized, or by the naturalization of his father during his minority; but whether he or his father was so naturalized or not, is a question of fact for the jury; and, as tending to prove the fact, the affidavit of the party himself is competent evidence for all purposes of said act of May 10, 1872. *Id.*

Territory Cannot Hold Forfeited Claims.—The act of the legislature of the Territory of Montana, attempting to declare forfeited to the Territory, or to authorize proceedings to declare forfeited, mining claims held by aliens, is in violation of the organic act, and void. *Territory vs. Lee*, 2 Mont. 124. For review of California legislation touching foreign miners' tax, see *Mitchell vs. Hagood*, 6 Cal. 148.

ANNUAL LABOR.

(*See Expenditure*).

APPLICATION FOR PATENT.

Locator of Mining Claim.—Under the mining laws of the United States, the locator of a mining claim becomes the assignee of the United States, and as long as he complies with the conditions imposed by them, and the license to occupy remains in force, the right of the locator to the possession of the land, and to appropriate to his own use the minerals therein, is full and complete; and he need not take any step to purchase the same unless he thinks proper. *Chapman vs. Toy Long*, 4 Sawyer 28.

ATTORNEY.

Extortion—Land Officer.—The Reg-

ister of the United States Land Office cannot act as an attorney for an applicant for patent to mineral land; and if he receive from such applicant a gross sum in part as his official fee, in part as charge for services as an attorney, such taking of money is extortion. *U. S. vs. Waitz*, 3 Sawyer 473.

BLACK HILLS.

Black Hills.—No title could be acquired to mining claims or lands in the Black Hills country until after the region was ceded by the Indians. *Ahly vs. Garrison.* Supreme Court of Dakota, May 12, 1879.

BOUNDARIES.

(*See Location*).

How Defined.—The boundaries and extent of the claim must be plainly defined by stakes or marks on the ground. *Gleeson vs. Martin White M. Co.*, 13 Nevada 442.

Negligence.—When a party has the means of ascertaining a boundary line, he is guilty of negligence in not ascertaining its location. *Mayo vs. Tappan*, 23 Cal. 306.

Extent of Claim—Declaration of President.—It seems that in a dispute as to the extent of a mining company's claim, the declarations of the president as to the position of the boundaries, if objected to, are not admissible in evidence. *Overman S. M. Co. vs. American M. Co.*, 7. Nevada 312.

Whom Estopped by—Agreement.—Where two several mining companies agree upon a boundary line between the claims of the two companies, and, subsequently, other parties purchase the several interests of the two companies, with a knowledge of the boundary-line so fixed, both parties are concluded by it, and are estopped from denying the line. *Magee vs. Stone*, 9 Cal. 600.

Acquiescence.—Lessees present at a staking of a boundary line upon a reference made by lessors and the adjoining owners, are bound by their presence and acquiescence. *Taylor vs. Parry*, 1 Scott N. R. 576.

Marking Boundaries.—One seeking to hold a mining claim by virtue of prior possession alone, without any reference to local mining customs, must mark out his boundaries by such distinct physical marks or monuments as will indicate to any person what his exterior boundaries are. *Hess vs. Winder*, 30 Cal. 349.

Fences not Required.—Fences are not requisite around mining claims. The physical marks upon and around the claim are sufficient to notify every one of the possession and claim of the possessor; and by common understanding, the going upon a claim to work it is an appropriation of the entire claim; especially if that claim can be appropriated to that extent by location by one man. *English vs. Johnson*, 17 Cal. 107.

Fencing not Necessary to Possession.—Fencing a mining claim would serve no useful purpose except to mark its boundaries; and any other means which will accomplish that object will equally answer the requirements of the law as to the possession of such a claim. *Rogers vs. Cooney*, 5, 6 & 7 Nevada 872.

Evidence.—In an action to recover damages for a trespass upon the plaintiffs' mining claims, where the defendants own adjoining claims lying west of the plaintiffs' ground, and both parties agree as to the north line of the plaintiffs' claims, and admit that their east and west lines are parallel, but disagree as to their location, and W. & Co. own claims adjoining and east of plaintiffs, and H. & Co. own claims adjoining and east of W. & Co., evidence of the location of the west line of H. & Co. is not pertinent, unless the east and west lines of W. & Co. are parallel, and the east line of W. & Co. is coincident with the west line of H. & Co. *Stoakes vs. Monroe*, 36 Cal. 383.

Question of Fact.—What is the right boundary line of a "sett," or piece of a mine let, and whether certain premises are parcel or no parcel of the ground demised, is a question of fact for the jury; but the judge is bound to tell the jury what is the proper construction of any document necessary to be considered in the decision of that question. *Lyle vs. Richards.* L. R. 1 H. L. 222; 35 L. J. Q. B. 214.

CITIZEN.

(*See Alien.*)

Corporation.—A corporation organized and existing under the laws of California is to be deemed a citizen in the sense of the Act of Congress of May 10, 1872, *North Noonday M. Co. vs. Orient M. Co.*, 1 Federal Reporter 522.

CLAIM.

(*See Mining Claim.*)

CONTRACT.

When Signed by Both Parties.—If a contract is drawn between the several locators of a mine and certain prospectors, to give a part of the ground for developing the mine, and signed by part only of the locators, if the prospectors go on to work, it is at their own risk. Those not signing or consenting to the contract are not bound. *Chase vs. Savage S. M. Co.*, 2 Nevada 9; 1 & 2 Nevada 533.

Abandoned Because of Failure to Perform Condition.— If two persons

agree with a third to furnish necessary supplies to the latter, as the same shall be required, for discovering and locating lodes for the joint benefit of all, the latter may treat this as a condition precedent, and upon failure to furnish the supplies, he may abandon the enterprise, or he may proceed to discover and locate lodes in his own right, without regard to the contract. *Murley vs. Ennis*, 2 Col. 300.

Title of Purchaser.—Where the owner of a mining claim contracts, verbally, with J., for the working thereof, and agrees to pay him a certain sum out of the proceeds of the mine, and J. goes into possession thereof, and while he is working it, the owner sells it to a third party, who takes without notice of J's contract: *Held*, that his claim is not subject, or liable, to J's contract. *Jenkins vs. Redding*, 8 Cal. 598.

Customs of Miners — Where the terms of an agreement respecting joint ownership of ore beds are doubtful, the usage of the parties in taking ore for their respective furnaces, must be an important element in their construction. *Coleman vs. Grubb*, 23 Pa. St. 393.

Sale—Quarry and Marble Works—Present Capacity —A sale of a quarry with an agreement to keep a mill or marble works supplied with marble is made with reference to the present capacity of the mill, so that the mill cannot call for an increased supply on account of its enlargement. *Rutland M. Co. vs. Ripley*, 10 Wall. 339.

Letters — Extension of Time. — Where an executory contract for sale of mines was accompanied by a covenant on the part of the purchaser to open them, and an extension of the time was alleged to be proved by certain letters it was held that the court must determine as matter of law the effect of such letters, and whether they referred to an extension of all the terms of the contract, or related only to an extension of time to open the mines. Second, That an extension of time in general terms would refer to all the terms of the contract. *Luckhart vs. Ogden*, 30 Cal. 547.

Stockholders Acting for the Corporation—Option—Conditional Sale.—A contract with the owners of the stock of a mining corporation, as parties of the first part, reciting that the parties of the second part are desirous of buying the stock and mine if the tests they make prove satisfactory, and shall take possession of the mine, and make improvements on it, and that the stockholders shall assign the stock to trustees, and that the parties of the second part shall pay at a time fixed a certain sum to the trustees for the stockholders and have the stock, but forfeit their improvements and redeliver possession if they fail to pay, accompanied by a resolution of the board of directors to convey the mine to the parties of the second part if the payment is made, merely gives the parties of the second part the option of purchasing, and by their failure to pay they lose the privilege of buying, but do not become liable for the amount they were to pay. *Gordon vs. Swan*, 43 Cal. 564.

Measurement: "More or Less"—Pleading.—A contract to run a tunnel (or drift) 180 feet, "more or less," is completed when 180 feet have been run. *Gerrens vs. Huhn & Hunt S. M. Co.*, 10 Nev. 137.

Where on such a contract plaintiffs sued for 384½ feet, but did not aver that the additional feet were run at the instance of defendant, nor that the defendant had promised to pay for the same; *Held*, that the complaint did not state a cause of action. *Id.*

CONVEYANCE.

California—Act Relative to Conveyance.—The Act of April 13th, 1860, relative to the conveyance of mining claims, applied to gold claims only until the amendment of 1863, striking out the second section, after which it applied to all mining claims. *Patterson vs. The Keystone Mining Company*, 30 Cal. 360.

Evidence of Title.—The provision contained in the first section of the Act of April 13th, 1860 (Stats. 1860, p. 175), that "conveyances of mining claims may be evidenced by bills of sale, or instruments in writing under seal," is mandatory; and it was intended that the method of conveying such property therein prescribed should exclude transfers by verbal sale, even though accompanied by a delivery of possession. *Felger vs. Coward*, 35 Cal. 650. See *Melton vs. Lombard*, 51 Cal. 258; *Watts vs. White*, 13 Cal. 321.

Evidence as to Execution of a Deed.—A deed for a mining claim, executed and recorded in the district where the claim is situated, before any act was passed by the Territorial assembly, relating to such instruments, cannot be given in evidence without proof that it was executed by the grantor: 1. According to the local rules and customs of the district; or, 2. By the subscribing witnesses (if there are any), as provided in the 15th section of the chapter relating to conveyances. R. S. 109. *Sullivan vs. Hense*, 2 Col. 424.

Corporate Seal—Recital of Authority.—A deed, without the corporate seal, purporting to have been executed on behalf of a corporation by its board of trustees,

is inadmissible as evidence without first showing their authority to execute the same. The recital of such authority in the deed is not evidence of its existence. *Gashwiler vs. Willis*, 33 Cal. 11.

Form of Bill of Sale.—No precise form of words is necessary to work a conveyance in a bill of sale for a mining claim. If it be clear from the language of the instrument that the maker intended to pass thereby the title to the property, the law will, if possible, so construe the words used as to effectuate that intent. *Meyers vs. Farquharson*, 46 Cal. 190.

Absolute Grant.—A deed after the grant of a distinct parcel in fee continued: "also the right of digging for coal under the adjoining land lying east of said lot (describing the adjoining land), together with all and singular the tenements, hereditments and appurtenances, to the said lot or parcel of ground belonging, with the right of digging for coal as aforesaid." Also a covenant of warranty of the lot, "with the right of digging for coal as aforesaid," to the grantee, his heirs and assigns "free from the claim of all persons:" *Held*, a conveyance of the absolute property in the coal. *List vs. Cotts*, 4 W. Va. 543.

Parol Evidence.—Admissible for certain explanations. *Remer vs. Nesmith*, 34 Cal. 624.

How Construed.—Where the language of a deed admits of but one construction, and the location of the lode or premises intended to be conveyed is clearly ascertained by a sufficient description of the ground in the deed by courses, distances or monuments, it cannot be controlled by any different exposition derived from the acts of the parties in locating the premises, or from the failure of the grantor to designate the various names by which the ground conveyed was at different times known. *Weill vs. Lucerne M. Co.* 11 Nevada 201.

Knowledge—Questions of Science.—In cases of obscure instruments, especially on motions for a preliminary injunction, a court may inquire into the actual state of the knowledge which the parties to it had upon the subject of it, and where it involves questions of science, may refer to the state of public knowledge, or that of learning, at the time the deed was made. *So held* upon the construction of an indefinite and uncertain grant, or lease, or license of the oil, or the right to take the oil upon a tract of land made at a time before the oil was known to be obtained by boring. *French vs. Brewer*, 3 Wall. Jr. 346.

Blind Lode—Tunnel Discovery—Parol Evidence.—Where a lode known as the Gold Hill Ledge had been discovered and located on the surface, and it remained in doubt whether it was the same lode which had been cut by a tunnel below, and the said tunnel was prosecuted for blind lodes, as well as for the lode discovered on surface: *Held*, that not only could the *habendum* of a deed which was uncertain as to its conveyance of the Gold Hill Ledge be used to explain or qualify the description in the granting clause, but that parol evidence was admissible to show the circumstances under which the deed was made to reach the intent of the parties as to the Gold Hill Ledge. *McCurdy vs. Alpha G. & S. M. Co.*, 3 Nev. 29.

Designation of the Name of the Claim—Two Locations—Where a party conveys all his right, title and interest in and to certain mining ground and quartz lode described in the deed, and it appears as a fact that his interest was derived from two different notices of location which were posted upon and claimed the same lode, *Held*, that the conveyance of his interest in the lode necessarily conveyed his interest under both locations, and it was immaterial by what particular name he designated it. *Phillpots vs. Blasdell*, 8 Nev. 61, affirmed; *Weill vs. Lucerne M. Co.*, 11 Nev. 201.

Possession.—Adverse possession does not invalidate a conveyance by a party out of possession. *Roberts vs. Cooper*, 20 How. 467.

Minerals Pass by Conveyance of Land.—Where individuals convey lands, the minerals of gold and silver pass, unless expressly reserved. *Moore vs. Smaw*, also *Fremont vs. Flower*, 17 Cal. 199.

Boundary—Parol Evidence—Emery—Iron Ore.—Where there was a conveyance of the metals and minerals in a certain tract "beginning at the centre of the vein of iron ore on the line between, etc.," and in trespass for taking ore there was conflicting testimony as to whether there was any such vein, or whether there was not more than one vein, and whether the parties agreed on a line of rocks as marking a supposed vein, and whether if any vein it was not a vein of emery instead of iron: *Held*, that if there was one vein of iron ore as called for in the deed, parol evidence could not affect the construction of the deed upon the question of boundary; 2. If more than one vein, parol evidence must show which was intended; 3. If it was a vein of emery or a line of rocks, it would be a good boundary under the deed, though treated by the parties as a vein of iron ore. *Chester Emery Co. vs. Lucas*, 112 Mass. 424.

Title—How Transferred.—The interest of C. W. H. in said mining ground (it

being conceded that it is real estate) could only pass to H. by deed or last will and testament; where, in the absence of both, C. W. H. being seized of the property, died intestate, the property descended to J. W. H. (his father). *Hardenbergh vs. Bacon*, 33 Cal. 356.

Unstamped Conveyances and Subsequent Stamped Conveyances. — Where a party, while the Acts of Congress requiring conveyances to be stamped are in force, makes a conveyance without affixing a stamp thereto, and the grantee in such unstamped conveyance conveys subsequently by deed, duly stamped and in all respects valid, the grantee under the deed properly stamped takes the title unaffected by the failure to stamp the prior deed. *Kenney vs. Con. Va. M. Co.*, 4 Sawyer 382.

Mistakes for and Against Grantors.—If a party, in making a conveyance of one part of a mining claim, makes a mistake against himself as to the amount conveyed, and in another part of the same conveyance makes a mistake in his favor of a corresponding amount in another portion of the same mine, and the grantee obtains no more in the aggregate than he purchased and paid for, the equities are equal, and a court of equity will not, on application of the grantor, reform the conveyance by correcting the mistake against him, to the injury of the other party upon the entire transaction. *Id.*

Actual and Constructive Possession.—H. and others, defendants, conveyed a mine to C., and delivered a shaft and level in the mine to plaintiffs as agent of C., retaining a certain other shaft and level in the same lode, not connected with the first, apparently claiming that part as upon another lode. C. contracted to sell to plaintiffs the same mine, and gave them a bond for a deed. Afterward, by sinking and stoping, defendants took ore from the level and shaft retained by them; but the opening was not extended longitudinally. In trespass for the value of the ore so taken: *Held*, that the plaintiffs had not actual or constructive possession of the *locus in quo*, because: 1. Throughout the length of the level retained by them, the defendants had actual possession of the vein, from the surface to the center of the earth. 2. The plaintiffs' possession, whether referred to the bond from C. to them, or as vendees and licensees of C., cannot be extended to the part actually occupied by defendants. 3. The circumstance that C. purchased for the benefit of plaintiffs cannot be effectual in a court of law, since he held the legal title. *Hugunin vs. McCunniff.* 2 Col. 367.

Partition — Security for Indorsements.—A tract of land was held by several tenants in common, and on partition, a certain portion was set apart and quit-claimed to plaintiff, representing M., who had conveyed to plaintiff as security for indorsements. Another portion of the land was set apart and quit-claimed to H. The portion thus received by H., was subsequently conveyed to plaintiff, and embraces the land in controversy. *Held*, that plaintiff is not mortgagee of the premises; that even if he held the premises conveyed by H. to him as security for the indorsements of M., it was as trustee of the legal title; that the title had passed from H. and had never been in M., except of an undivided interest before the partition, and was therefore in plaintiff, who could maintain ejectment. *Seaward vs. Malotte*, 15 Cal. 304.

Conveyance Without Deed.—Where by the usages and customs existing in the Territory of Utah (now State of Nevada) interests in mining claims situated therein, which had been acquired by location, in accordance with the local customs and usages which then and there prevailed, could be sold and conveyed by delivery of possession without deed or other instrument in writing; and where the ancestors, from whom the plaintiff took by descent certain undivided interests in such a mine, in his lifetime, in common with the other owners so sold and conveyed said interests to a corporation formed under the laws of the State of California, by an association consisting of said ancestor and the other owners of said mine, which sale was in trust for the members of said association and their legal representatives, which conveyance was duly accepted by said corporation; *held*, that thereby said corporation acquired the title of said ancestor to said mine, and that said trust was enforceable by plaintiffs against said corporation. *Blodgett vs. Potosi G. & S. Mining Co.*, 34 Cal. 227.

Contents—How Proved.—Where K. acquired his interest in a mining claim by purchase, evidenced by deed or bill of sale, he was bound, for the purpose of showing title in himself, to produce the deed or bill of sale, or prove its loss, for the purpose of laying the foundation for the introduction of secondary evidence as to its contents. *King vs. Randlett*, 33 Cal. 318.

Written Instrument not Needed When.—The statute of frauds, requiring an instrument in writing to create an interest in land, does not apply to the taking up of mining claims. A mere verbal authority to one man to take up a claim for another is sufficient. No title is divested out of the

government, but a right of entry given under it. *Gore vs. McBrayer*, 18 Cal. 582.

Title Passed by Possession.—Where the owners of a mining claim, previously located by themselves and others, became incorporated, and placed the corporation thus formed in possession of the claim as their successor in interest, with the evident intention that whatever rights the unincorporated individuals had should pass to the corporation: *Held*, that the title to the claim passed to the corporation as effectually as it would if the transfer had been accompanied by a conveyance in writing. *Table Mountain Tunnel Co vs. Stranahan*, 20 Cal. 198.

Legal Title—In Whom Vested.—The legal title to the property of a mining corporation is vested in the corporation, and not in the stockholders as such. *Wright vs. Oroville M. Co.*, 40 Cal. 20.

CUSTOM.

(*See Local Laws.*)

Distinguished from Prescription—Profit a Prendre.—A custom gives a right local to a district or community: prescription is a right attaching to the person or to a particular estate. *Perley vs. Langley*, 7 N. H. 233. See *Constable vs. Nicholson*, 14 Scott's C. B. Reports 230.

Whether rights are held as a custom or as a prescription, depends upon whether they are held as a local usage or *contra* as a personal claim, or as dependent on a particular estate. *Id.*

All rights which may be held under a custom may be held by prescription, but the reverse of this is not true. *Id.*

A profit in another's land must be established as a prescription by the individual through his ancestors, or a corporation and its predecessors, or as appurtenant to some estate held by the claimant. *Id.*

"There are no authorities that sustain the removal of the soil, or the taking of profits from the soil of another as a custom." *Id.*

Profit a Prendre.—A profit *a prendre* in another's soil cannot be claimed by custom, however ancient, uniform and clear the exercise of that custom may have been. *Atty.-Gen. vs. Mathias*, 4 Kay & J. 579.

Miners' Right—How Not Proved.—A custom allowing strangers to enter upon lands of another, and mine for lead, locally called "miners' right," cannot be proved by the usage of a single mine, or the usage of a few parties. *Fuhr vs. Dean*, 26 Mo. 116.

Cannot Divest Title.—Where a party's rights to a mining claim are fixed by the rules of property which are a part of the general law of the land, they cannot be divested by any mere neighborhood custom or regulation. *Waring vs. Crow*, 11 Cal. 367.

DEED.

(*See Conveyance.*)

DISCOVERY.

Rights of Discoverer.—If it be once established or admitted that one of a company of miners was the real discoverer and entitled to a discoverer's share in the location, then such discoverer could thereafter only be shown to have divested himself of that interest by clear and positive evidence. The evidence of one witness, that the party agreed the discoverer's claim should be divided among all the shareholders in the company, when contradicted by another witness who says he positively refused to assent to such a proposition, is not sufficient. *Smith vs. North American M. Co.*, 1 & 2 Nevada 357.

Effect of Discovery Not Followed Up.—A discoverer who neglects to have his title adjudicated and registered agreeably to the ordinance, or to have his pertenencias measured and marked, does not, by such negligence, forfeit his title, but simply fails to acquire any title which could be the subject of forfeiture. *U. S. vs. Castillero*, 2 Black 20.

One Wall Must be Found.—Before a quartz mine can be legally located a lode must be discovered, and "before such discovery can be called a discovery, at least one well defined wall or side of the lode must be found." *Foote vs. National M. Co.*, 2 Mont. 402.

DESCRIPTION.

Well-known Monuments.—The following description of a mining claim in a bill of sale "commencing at an oak bush near the gate of Myers' cow-yard, running straight across the river to the head of the wing-dam put in by Owens & Co., in 1868; from thence to a prominent point of granite bed-rock in El Dorado county; from this line down to the old Willow Bar line," no State mentioned: *Held*, sufficient to allow the paper to be received in evidence, as the places mentioned might be well-known monuments easily distinguished. *Meyers vs. Farquharson*, 46 Cal. 190. See *Hancock vs. Watson*, 18 Cal. 138.

Parol Evidence.—Where the description of mining ground is differently stated in the complaint and the instrument sued on, but the descriptions are not contradictory, parol evidence is admissible to show that the two descriptions cover the same ground. *Began vs. O'Reilly*, 32 Cal. 11.

Magnetic Meridian — Parol Evidence.—In an action concerning disputed boundary between two mining claims, depending on an agreement between the parties, in which the word "north" was used, and parol evidence was admitted to prove that it was the custom of the locality to run boundary lines by the magnetic meridian, and that that was the understanding of the parties: *Held*, that such evidence was admissible, not to contradict or vary the term, but to ascertain the sense in which it was used. *Jenny Lind Co. vs. Bower & Co.*, 11 Cal. 194.

No Lateral Boundaries.—In a decision upon the sufficiency of description in a tax levy, the court remarked: "We know it is a common and almost universal custom for prospectors in this state to take up claims for mining purposes on the public domain, describing them as so many feet of a certain lode, lead, ledge, or mineral vein, with all its dips, spurs and angles, but giving no lateral boundaries to the claim." (1865.) *State vs. Real Del Monte G. & S. M. Co.*, 1 Nev. 523.

Ledge—How Construed.—The term, "Great Hill or Ledge of Lime Rock," in a deed, is to be construed, in order to ascertain its extent and limits, in the light of the circumstances attending the transaction, according to the intent of the parties, derived from the language employed by them. *Dexter Lime Rock Co. vs. Dexter*, 6 R. I. 353.

Bar Placer Claims.—In a description of bar placer claims, giving name of claim and adjoining claim, size and location in canyon, it was held sufficient. *Grady vs. Early*, 18 Cal. 109.

DISTRICT.

Districts Changed—Vested Rights.—The extent of a mining district may be changed by those who created it, if vested rights are not thereby interfered with. *King vs. Edwards*, 1 Mont. 235. See *Golden Fleece vs. Cable Consolidated Co.*, 12 Nevada 322.

DISTRICT LAWS.

(*See Local Laws*).

EXPENDITURE.

Outside of Claim.—Work done outside of a mining claim, with intent to work the claim, to be considered by intendment as work done on the claim, must have direct relation and be in reasonable proximity to it. *McGarrity vs. Byington*, 12 Cal. 426.

Prospecting Outside a Claim.—Work done outside a claim for the purpose of prospecting or developing it, is as available for holding the claim as if done within the boundaries of the claim itself. *Mount Diablo M. Co. vs. Callison*, 5 Sawyer 439.

Several Claims Worked by One System.—The owner of several contiguous claims may form one general system adopted and intended to work them all; and when such is the case, work in furtherance of the system is work on all the claims intended to be developed by it. *Idem.*

White Pine Mining Laws.—Under the mining laws of White Pine District, as amended in July, 1867, it requires only two days' work to hold a "location" for a year; and such location means an entire mining claim, irrespective of the number of locations or feet. *Leet vs. John Dare S. M. Co.*, 5, 6 & 7 Nevada 538.

Trespasser—Within One Year.—Where the law requires a certain amount of labor to be performed "within one year," the locator has until the year expires to perform such labor. And a party who enters upon his claim after the other acts of location are performed, but before the expiration of such year, is a trespasser. *Atkins vs. Hendree*, 1 Ida. 108; *Chapman vs. Toy Long*, 4 Sawyer 35.

Co-tenants.—Where a mine is possessed by tenants in common, "it is a physical impossibility to work on the interest" of one co-tenant alone. *Oro Fino Co. vs. Cullen*, 1 Ida. 133.

Possession — Tunnel.—Going on a lode to work it, or even work done in proximity having direct relation to the claim for the purpose of extracting or preparing to extract minerals from it, as for example, starting a tunnel at a considerable distance to cut the claim, would be a possession of the claim within the rules determining possession. *English vs. Johnson*, 17 Cal. 108.

Resumption of Work.—The statute requires one hundred dollars' worth of work on each claim located after May 10, 1872, in each year, and in default thereof, authorizes the claim to be relocated by other parties, provided the first locator has not resumed work upon it. But if the first locator resumes work at any time after the expiration of the year, and before any relocation is made, he thereby preserves his right to the claim: and no other person has any right to relocate it after such resumption of work in good faith, by the first locator, even though the latter had failed to perform any work for the period of one year, or more immediately before he resumed work. *North Noonday M. Co vs. Orient M. Co.*, 1 Federal Reporter 522.

EXECUTION.

Property—Liable to Execution.—The interest of a miner in his mining claim is property, and may be taken and sold under execution. *McKeon vs. Bisbee*, 9 Cal. 137.

FORFEITURE.

Forfeiture—Defined.—The term forfeiture, as used in our mining customs and codes, means the loss of a right, previously acquired, to mine a particular piece of ground by neglect or failure to comply with the rules and regulations of the bar or diggings in which the ground is situated. *St. John vs. Kidd*, 26 Cal. 263.

Forfeitures Deemed Odious.—Forfeitures are deemed in law odious, and must be made clearly apparent before courts will enforce them. *Mount Diablo M. Co. vs. Callison*, 5 Sawyer 439; *Oreamuno vs. Uncle Sam M. Co.*, 1 Nev. 215.

Question of Law.—Mining laws, when introduced in evidence, are to be construed by the court, and the question whether by virtue of such laws a forfeiture had accrued, is a question of law, and cannot, therefore, be properly submitted to a jury. *Fairbanks vs. Woodhouse*, 6 Cal. 433.

Intent.—The question of intent is not involved in forfeiture. *St. John vs. Kidd*, 26 Cal. 263; *Bell vs. Bearock Co.*, 33 Cal. 214.

Forfeiture is a Legal Conclusion.—An averment of forfeiture is a legal conclusion upon which no issue can be taken. The facts should be stated so as to enable the court to determine whether a forfeiture did accrue. *Dutch Flat W. Co. vs. Mooney*, 12 Cal. 534.

Effect of Local Rules.—The failure of a party to comply with a mining rule or regulation, cannot work a forfeiture of his title thereto, unless the rule itself so provides. *Bell vs. Bed Rock T. and M. Co.*, 36 Cal. 214.

Person Necessary.—In order to have a forfeiture take place, there must be some person, natural or artificial, who is entitled to receive the benefit of the forfeiture when it accrues. *Wiseman vs. McNulty*, 25 Cal. 230.

Construction of Articles of Association.—Articles of association of a mining company must be construed strictly against forfeiture. *Von Schmidt vs. Huntington*, 1 Cal. 70.

Forfeiture—A Failure to Comply with Law.—The mining laws of the locality govern the location and manner of developing the mines, and when they directly point out how such mining claims must be located, and how the possession once acquired is to be maintained, that course must be strictly pursued. A failure to do so might work a forfeiture of the ground. *Mallett vs. Uncle Sam G. & S. M. Co.*, 1 & 2 Nevada 157.

Forfeiture Presumed When.—The rules and customs of miners, that require locators to do a certain amount of work upon their claims, are conditions subsequent; and the law presumes that such locators forfeit their rights to possess and mine the same by a failure to comply therewith, although no penalty is specified in such rules and customs. *King vs. Edwards*, 1 Montana 235.

Failure to Comply with Local Customs—Claims.—A right to hold and work a mining claim when acquired may be lost by a failure or neglect to comply the rules and regulations of the miners, relative to the acquisition and tenure of claims, in force in the bar or diggings where the claim is located; and if such rules and regulations are not complied with by those holding claims in the district, the ground becomes once more open to the occupation of the next comer. *St. John vs. Kidd*, 26 Cal. 263.

Diligence—Failure to Comply with One Law.—In the absence of any custom or local regulation, the right of property, once attached in a mining claim, does not depend upon mere diligence in working such claim. The failure to comply with *any one* mining regulation, is not a forfeiture of title. It would be enough to hold the forfeiture as the result of a non-compliance with *such* of them as make non-compliance a cause of forfeiture. *McGarrity vs. Byington*, 12 Cal. 426.

Non-Payment of Assessments.—Where a forfeiture of an interest in a mining claim for non-payment of assessments is claimed under an agreement entered into by all the tenants in common owning the same, the parties claiming the benefit of the forfeiture must show an exact compliance on their part with all the conditions in the agreement, or they will not be entitled to the forfeiture. *Wiseman vs. McNulty*, 25 Cal. 230.

HOISTING WORKS.

Trespass—Identical Soil.—The fact that hoisting works are erected by a trespasser over a vein of ore, and for the purpose of hoisting that ore, does not give the owner of the vein any right to those works, unless he also is owner, or is entitled to the possession of the very soil on which they are erected. *Bullion Mining Co. vs. Cræsus G. & S. M. Co.*, 2 Nevada 180.

INJUNCTION.

Preservation of Property. — When the title to a mining claim is in controversy, an injunction may be granted to preserve the property pending the litigation. *Hess vs. Winder*, 34 Cal. 270. See *Morrison's Mining Digest* for further references.

JURISDICTION.

Act of Congress — Jurisdiction of State Courts.—The object of the acts of Congress of July 26, 1866, July 9, 1870, and May 10, 1872, in relation to the location of mining claims, was not to confer any additional jurisdiction upon the state courts, but to require parties protesting against the issuance of a patent to try the right of possession and have the controversy determined in the state courts by the same rules, and governed by the same principles, and controlled by the same statutes, that apply in other cases. *The 420 M. Co. vs. Bullion M. Co.*, 9 Nevada 240.

Jurisdiction.—Where the only questions to be litigated in suits to determine the right to mining claims are, as to what are the local laws, rules, regulations and customs by which the rights of the parties are governed, and whether the parties have in fact conformed to such local laws and customs, the courts of the United States have no jurisdiction of the cases under the provisions of the act giving jurisdiction in suits "arising under the Constitution and laws of the United States." *Trafton vs. Nougues*, 4 Sawyer 178.

LABOR.

(*See Expenditure.*)

LEASE.

Fraudulent Lease of a Mine.—Where a board of directors of a mining corporation makes a nominal lease of the mine owned by the corporation, to a party really acting in the interests of a minority of the stockholders, not in the ordinary course of the business of the corporation, but for the purpose of withdrawing the mine from the control of a board of directors about to be elected at an approaching meeting of the stockholders, and thereby perpetuating the control of the minority, a court of equity will cancel the lease on a bill filed by the corporation for that purpose. *Mahoney M. Co. vs. Bennett*, 5 Sawyer 141.

LIENS.

Foreman of Mine Entitled to Lien. —Where a foreman of a mine is employed to "boss" the men at work in a mine, keep their time and give them orders for their pay, *Held*, that his employment is of that kind that is protected by the lien law. *Capron vs. Strout*, 11 Nevada 304.

Laborers' Lien.—The act of February 6, 1867, allowing liens in favor of laborers for work done on mining claims (Statutes of 1867, 48,) did not give a lien for labor done before its passage. *Hunter vs. Savage Con. S. M. Co.*, 3 & 4 Nevada 647; 4 Nevada 153.

Mechanic's Lien for Work Done by Miner under Various Contracts.—Where miners filed mechanics' liens for work done in the development of a mine, and it appeared that they worked a portion of the time under special contracts, and a portion of the time by the day, but always under the direction of the foreman of the mine: *Held*, that the work was to be considered as one continuous employment, and not as distinct and independent jobs or contracts, and that each miner might file one lien for all his labor within the proper time after stopping work. *Skyrme vs. Occidental Mill and M. Co.*, 8 Nevada 219.

LOCAL LAWS.

Reserved Rights — Miners' Customs.—The clause in Section 1 of the general mining act of July 26, 1866, "subject to such regulations as may be prescribed by law," is a reservation of the right by Congress to regulate by legal enactments the manner and conditions under which claims must be worked by miners. The clause in the same section, "subject also to the local customs or rules of miners in the several mining districts," relates to the rules, customs and regulations of miners regarding the location, user, and forfeiture of mining claims. *Robertson vs, Smith*. 1 Montana 410.

United States Courts.— Where the only questions to be litigated in suits to determine the rights to mining claims are as to what are the local laws, rules, regulations and customs by which the rights of the parties are governed, and whether the parties have in fact conformed to such local laws and customs, the courts of the United States have no jurisdiction of the cases under the provisions of the act giving jurisdiction in suits "arising under the constitution and laws of the United States." *Trafton vs. Nougues*, 4 Saw. 178.

Mining on the Public Lands Legalized—Rights of Miners.—Section 9 of the act of July 26, 1866, grants to the proper persons an easement upon the mineral lands of the public domain, which they may appropriate according to the local rules and customs of miners in the mining district in-

which the same may be situated, and thereby legalizes the mining upon the public lands of the United States for the precious metals. *Id.*

Nevada Statutes—Judicial Recognition.—The mining regulations once established and recognized by the courts, and in Nevada by statute, have the force of legislative enactments. *Mallett vs. Uncle Sam M. Co.*, 1 Nev. 194.

Judicial Notice.—Judicial notice cannot be taken of the rules, usages and customs of mining districts, and they should be proved at the trial, like any other fact, by the best evidence that can be obtained respecting them. *Sullivan vs. Hense*, 2 Col. 424.

Local Mining Districts and Rules.—The mining laws of the United States recognize and sanction the custom among the miners of organized mining districts to adopt local laws or rules governing the location, recording and working of claims not in conflict with the State or Federal legislation. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nev. 312.

Mining Customs—Effect on Common Law.—The rules and customs of miners in a particular district are laws, and constitute the American common law on mining for precious metals. *King vs. Edwards*, 1 Montana 235.

Mining Customs—Location of Mining Ground—The rules and customs, which point out the manner of locating mining ground, are conditions precedent, which must be substantially complied with. *Id.*

Mining Rules.—Miners have the power to prescribe the rules governing the acquisition and divestiture of titles to this class of claims, and their extent, subject only to the general laws of the State. *English vs. Johnson*, 17 Cal. 107.

Right of Possession.—In order to secure the right of possession to a mining claim, there must be a compliance not only with the laws of the United States, but also with such local regulations of the mining district as are not in conflict therewith. *Gleeson vs. Martin White M. Co.*, 13 Nevada 442.

The right in a mining claim vests by the taking in accordance with local rules. *McGarrity vs. Byington*, 12 Cal. 426.

Right to a Mining Claim — How Maintained.—To enable a party to maintain a right to a mining claim after the right is acquired, it is necessary that the party continued substantially to comply with the mining rules and customs established and in force in the district where the claim is situated. *Oreamuno vs. The Uncle Sam Gold & Silver Mining Co.*, 1 Nevada 215; *Strang vs. Ryan*, 46 Cal. 33; *Doak vs. Brubaker*, 1 Nev. 217.

Vested Rights.—The right to occupy, explore and extract the precious minerals in the mineral lands of the United States becomes vested in the party who locates these lands according to the local rules and customs of the mining district in which they are situated. *Robertson vs. Smith*, 1 Montana 410.

Observed "Mining Customs" Prevail over Disregarded "District Mining Laws."—Section six hundred and twenty-one of the Practice Act makes no distinction between the effect of a "custom" or "usage," the proof of which must rest in parol, and a "regulation" which may be adopted at a miners' meeting and embodied in a written local law; and a custom reasonable in itself, and generally observed, will prevail as against a written mining law fallen into disuse. *Harvey vs. Ryan*, 42 Cal. 626.

Existence of "District Mining Laws" a Question of Fact.—As the "mining law" of a district must not only be established, but in force, it is void whenever it falls into disuse or is generally disregarded; and the question whether it is in force at a given time is one of fact for the jury. *Idem.* See *Coleman vs. Clements*, 23 Cal. 245. See *North Noonday M. Co. vs. Orient M. Co.*, 1 Federal Reporter 522.

Possession—Presumption—Mining Customs.—It will be presumed, in the absence of evidence, that the parties in the possession of mining claims hold them according to the local rules and customs of the miners in the district. *Robertson vs. Smith.* 1 Montana 410.

Mining Laws Presumed to be in Force.—It is presumed that the written laws of a mining district are in force, and any custom that conflicts with them must be clearly proved. *King vs. Edwards*, 1 Montana 235.

Mining Rules as Evidence.—In suit for mining claims, the Court permitted defendants to introduce in evidence the mining rules of the district, though adopted after the rights of plaintiffs' had attached: *Held*, that admitting plaintiffs' rights could not be affected by such rules, still, as defendants claimed under them, they were competent evidence to determine the nature and extent of defendants' claim, the effect of such rules upon the pre-existing rights being sufficiently guarded by instructions of the Court. *Roach vs. Gray*, 16 Cal. 383.

Adoption After Location of Claim.—A local mining regulation or custom, adopted after the location of a claim, can-

not be given in evidence to limit the extent of a claim previously located. *Table Mountain Tunnel Co. vs. Stranahan*, 31 Cal. 387.

Introduction of Testimony.—Testimony as to mining customs may be introduced under our statute, however recent the date or short the duration of their establishment. *Smith vs. North American M. Co.*, 1 Nevada 424.

Controversies Solved by Mining Usages and Customs.—Where any local mining customs exist, controversies affecting a mining right must be solved and determined by the customs and usages of the bar or diggings embracing the claim to which such right is asserted or denied, whether such customs and usages are written or unwritten. *Morton vs. Solambo C. M. Co.*, 26 Cal. 527.

Change in Written Mining Regulations.—An alteration, made after their adoption, in one of several mining regulations reduced to writing by the officers of the meeting, does not change the legal effect of the other articles. *Table Mountain Tunnel Co. vs. Stranahan*, 31 Cal. 387.

Limitation of Purchase.—The mining rules of the district cannot limit the quantityof ground or the number of claims a partymay acquire by purchase. *Prosser vs. Parks*, 18 Cal. 47.

Rules of a District Not Varied by those of Another.—The rules and customs of the miners of one district cannot be introduced to vary those of another district. *King vs. Edwards*, 1 Montana 235.

Evidence of Local Mining Laws.—In order to introduce evidence of the local mining laws of districts, it is necessary that it should be made to appear *aliunde* that the copy offered comes from the proper custodian, and that such person was empowered to give certified copies thereof, so as to become evidence, and that such was a copy of the laws in force in such district. *Roberts vs. Wilson*, 1 Utah 292.

Book of Mining Rules as Evidence.—In this case: *Held*, that defendant could not offer in evidence an extract or single clause of a book containing the mining rules; but must offer the whole book—the book being in court, and in possession of defendant, and it being necessary to a fair understanding of any one part that the whole should be inspected. *English vs. Johnson*, 17 Cal. 107.

Proof of Mining Customs.—On the trial of an action to quiet the title to a mining claim, the plaintiffs' title depended upon maintaining their allegation, that by the custom prevailing among miners of the district embracing their claims, the mode of locating claims therein was for the locators to measure off and designate by stakes on the ground their boundaries, to enter upon the occupation of the same, and to cause a record thereof to be made of such location, in the county recorder's office: *Held*, that the contents of a book kept in said recorder's office, consisting of the records of numbers of such locations—among which, and the first in the order of their registration, was the record of plaintiffs' claim—was properly admitted in evidence as tending to prove such allegation. *Pralus vs. Pacific G. & S. Mining Co.*, 35 Cal. 30.

Excess Over Quantity Allowed by Mining Laws.—In the absence of any mining rule, declaring that a failure to record a claim avoids the entry or claim, a party may take actual possession of mineral land, though in taking possession he do not observe the requirements as to registry, and the like acts, prescribed by the local laws. But if he take more land than these rules allow, this would not give him title to the excess against any one subsequently entering, who complies with the laws, and takes up such excess in accordance with them. *English vs. Johnson*, 17 Cal. 107.

Laws Passed on a Different Day from that Advertised.—The fact that mining laws and regulations were passed on a different day from that advertised for a meeting of miners, does not invalidate them. Courts will not inquire into the regularity of the modes in which these local legislatures, or primary assemblages act. They must be the judges of their own proceedings. It is sufficient that the miners agree—whether in public meeting or after due notice—upon their local laws, and that these are recognized as the rules of the vicinage, unless fraud be shown, or other like cause for rejecting the laws. *Gore vs. McBrayer*. 18 Cal. 582.

Nevada County, California.— The true interpretation of the mining usage in the county of Nevada is, that work to the value of one hundred dollars, or twenty days of faithful labor performed on a claim, or on any one of a set of adjoining and contiguous claims, owned by the same party, is sufficient to hold the same for one year. *Bradley vs. Lee*. 38 Cal. 362.

Manner of Locating and Conveying Colorado Claims:—Before any law was enacted by the Territorial assembly, regulating the manner of locating and conveying mining claims on the public domain, that matter was regulated solely by rules or by-laws made by the inhabitants of the district in which the claim was situated, or in

the absence of such rules and by-laws, by the local customs and usages of the district. *Sullivan vs. Hense*, 2 Col. 424.

LOCATION.

Statutes Construed.—Section 3 of the mining act of May 10, 1872, recognizes as valid locations of mining claims made prior to its passage, and while the mining act of 1866 was in force, the surface lines of which included more than one vein or lode, and confirms the locators thereof in the exclusive possession of all the lodes which have their apex within the surface lines of such mining claim. *Mount Diablo M. C. vs. Callison*, 5 Sawyer 439.

Reasonable Time to Sink a Discovery Shaft.—The question of reasonable time is a matter of fact to be determined by the court when the facts are not controverted. That the court should have itself decided that the period occupied in sinking said shaft was not a reasonable time, and their having left the question to the jury under an instruction by which the jury were not absolutely precluded from finding that eighty-five days (the time actually occupied) was a reasonable time, it was a matter of mere grace, of which the locator could not complain. *Patterson vs. Hitchcock*, 3 Colorado 533.

Locations, How Made—Compliance with Act of Congress.—Under the laws of Congress the location of a mining claim, or a vein, must be made by taking up "a piece of land" to include the vein. *Gleeson vs. Martin White M. Co.*, 13 Nevada 442.

Colorado Mining Claims Located in 1860.—In the year 1860, a valid location of a mining claim on the public domain could be made only according to the rules, usages and customs of miners in the district where such claim is situated. *Sullivan vs. Hense*, 2 Col. 424.

Sufficiency of Notice and of Location.—A notice of location, otherwise good, is not invalid because it does not contain a description of the claim by reference to some natural object or permanent monument; the law only requires that the record of the claim shall contain such description. It is a sufficient compliance with the law if the description of the *locus* of the claim is appended to the notice when it is recorded. *Gleeson vs. Martin White M. Co.*, 13 Nevada 442.

General Recognition Makes a Title Good.—Where a mining claim is made and actually possessed and worked for several years, the claim and location being generally recognized as valid by the miners of the vicinity, the title of the claimant is good, even though the location may not have been originally made in strict accordance with the mining rules in force at the time, especially so as between the co-claimants and their grantees. *Kinney vs. Con. Va. M. Co.*, 4 Sawyer 382.

Mineral Districts—Locations for Diverse Purposes.—One party may locate ground in the mineral districts for fluming purposes, and another party, at the same or a different time, may locate the same ground for mining purposes the two locations, being for different purposes will not conflict. *O'Keife vs. Cunningham*, 9 Cal. 589.

Statement of Witnesses.—Where the location of a mining claim is made both by posting notices and by designating fixed objects, such as trees, shafts, and ditches, on or near its exterior boundaries, in an action between two companies involving the title to a portion of the ground, witnesses are not confined in their testimony to a statement of the contents of the notices, but may also state whether the location made included the ground in dispute. *Kelly vs. Taylor*, 23 Cal. 11.

Location Presumed to Include.—A location of a lode claim will be presumed to include the vein upon which the discovery was made, until the contrary is shown. *Patterson vs. Hitchcock*, 3 Colorado 533.

But when the vein has been shown to leave the side lines of the location, the location beyond the point of departure is defeasible, if not void, *Id.*

Excess Void—Stakes Misset.—A claim of more than the number of feet allowed by law upon a quartz claim is void for the excess, but setting the stakes a few feet farther apart than the limit allowed by law does not defeat the entire claim. *Atkins vs. Hendree*, 1 Ida. 108.

Patent Broader than the Law.—A lode claim is to be fixed by reference to the plat or survey of the location; and although the lode, in its descending course, may be followed to any depth with its dips, angles and variations, into the premises adjoining, yet in its onward course or strike it may not depart from the line of its location, and the patentee is not entitled to its possession beyond the lateral boundaries, as against one who has subsequently located and patented it. If the patent is broader than the law, it is to that extent nugatory. *Wolfley vs. Lebanon M'g. Co.*, 4 Col. 112.

Quantity of Ground.—The quantity of ground a miner can claim by location or prior appropriation for mining purposes may be limited by the mining rules of the district. *Prosser vs. Parks*, 18 Cal. 47.

Reasonableness of the Extent of a

Location.—Upon the question of reasonableness of the extent of a mining location, a general custom, whether existing anterior to the location or not, may be given in evidence; but a local rule stands upon a different footing, and cannot be introduced to affect the validity of a claim acquired previous to its establishment. *Table Mountain Tunnel Co. vs. Stranahan*, 20 Cal. 198.

Reasonableness of Size of Claim.—If the defendants in an action claim that when they took up the ground in dispute a local custom allowed them three hundred feet front to each man, and they located to that extent, they are estopped from asserting that the plaintiff's location to the same amount, made before the adoption of the custom, was unreasonable in size. *Id.*

Declarations Admissible.— Plaintiff located a quartz lode and commenced work, digging up the rock towards the lode, at a distance of fifty or one hundred feet from it: *Held*, that his declarations made at the time, as to his object in commencing work at that point, were admissible in evidence. *Draper vs. Douglass*, 23 Cal. 347.

Renewal of Location.—If the mining laws require a renewal of notice of location at stated periods, and a claim has been lost by reason of a failure to make such renewals, and one of the joint locators afterward renews the location, stating that it is a renewal, and not a new location, the renewal will inure to the benefit of all the locators. *Strang vs. Ryan*, 46 Cal. 33.

Time Allowed to Perfect Location.—Upon discovering a lode, the locator is entitled to a reasonable length of time in which to perfect the development which the local law requires of him. *Murley vs. Ennis*, 2 Col. 300.

Notice of Location Construed.—Where a notice reads that the locators have taken, and claim, "for mining purposes 1,200 feet of ground on the face of this hill * * * running north 1,200 feet from stake, with all its dips, angles and spurs, from thence to the centre of the hill:" *Held*, that the words, "with all its dips, angles spurs," refer to lode, not to surface or hill claims. *Weill vs. Lucerne M. Co.*, 11 Nev. 200.

Record or Office Copy of Certificate of Location.—A certificate of location of a mining claim may be proved by the record or by a transcript from the record under another statute (R. S. 466), without the affidavit of the party desiring to use it as to the possession of the original certificate. *Sullivan vs. Hense*, 2 Col. 424.

Mining Law Construed.—The language of a mining law being that "the locator of a ledge shall be entitled to hold one hundred feet on each side of his ledge:" *Held*, that by virtue of location of a certain number of feet along the ledge, without any distinct claim of side ground, the locator was entitled to hold one hundred feet on each side of the ledge so located. *Mount Diablo M. Co. vs. Callison*, 5 Sawyer 439.

Claiming All the Privileges Granted by the Law—Where a locator in his notice of location, claimed "all the privileges granted by the laws" of the mining districts: *Held*, that this was a sufficient claim for the one hundred feet on each side of his ledge granted to a locator by the mining law, admitting such claim to be necessary. *Id.*

Plaintiffs in Ejectment Must Prove a Valid Location.— Plaintiffs in ejectment, who seek to recover a mining claim upon the strength of their paper title, there being nothing to show that they or their grantors were ever in possession, must prove a valid location of the claim according to the rules, usages and customs of the district prevailing at the time such location was made. *Sullivan vs. Hense*, 2 Col. 424.

Ineffectual Location of Mining Claim.— The placing of a monument in the center of a mining claim upon a mineral vein, and posting a notice thereon, stating that the "undersigned claims seven hundred and fifty feet easterly, and seven hundred and fifty feet westerly therefrom, together with three hundred feet on each side of the vein, with all the dips, spurs and angles," giving the name of the lode and district, is not a sufficient compliance with the Act of Congress of May 10, 1872, which requires locators of mining claims to distinctly mark their locations on the ground, so that the boundaries can be readily traced. *Gelcich vs. Moriarty*, 53 Cal. 217.

Declarations of Superintendents.—After a vested right to a mining company's claim has been acquired by a compliance with the laws, it is not held by so precarious tenure as that it can be reduced by mere declarations of superintendents and officers. *Overman S. M. Co. vs. American M. Co.*, 7 Nevada 312.

Insufficient Location.—The posting of a notice upon a tree at each end of a mining claim is not a sufficient compliance with Section 2324 of the Revised Statutes of the United States, which requires the location to be "distinctly marked on the ground so that its boundaries can be readily traced." *Holland vs. M. A. G. Q. M. Co.*, 53 Cal. 149.

Width of Lead—Point of Measure-

ment.— The proper construction of the act of the Montana Legislature, of December 26, 1864, contained in the Codified Statutes, 522, § 3, is that the measurement of the *fifty* feet on either side of the *lead*, allowed for working purposes, should begin from the outer walls of the *lead*, on each side, and not from the centre of the *lead* itself. *Foote vs. National Mining Co.* 2 Montana 402.

Meaning of "Location" in White Pine Mining Laws.—The word "location," as used in the mining laws of the White Pine district, means the aggregate of ground claimed as a mine, and not the interest of a single shareholder. *Leet vs. John Dare S. M. Co.*, 5, 6 and 7 Nevada 538.

Absence of Mining Laws — Presumption.—In the absence of mining regulations, the fact that a party has located a claim bounded by another, raises no implication that the last-located claim corresponds in size, or in the direction of its lines, with the former. *Live Yankee Co. vs. Oregon Co.*, 7 Cal. 41.

Rights of Co-locators.—There being no evidence tending to show that Leonard's co-locators were aware of his disability, or were colluding with him in his attempted fraud, if he was an alien: *Held*, that in such a case the law would be sufficiently vindicated by holding that the alien's claim is void. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nevada 312.

Vein and Lode Defined.—While metalliferous rock in place, not in a fissure, may be found under such conditions within clearly defined boundaries, as to require recognition as a vein or lode, as in the Eureka case, 4 Sawyer 302, a broad metalliferous zone, having within its limits true fissure veins, plainly bounded, cannot be regarded as a single vein or lode, although such zone may itself have boundaries which can be traced. *Mount Diablo M. Co. vs. Callison*, 5 Sawyer 439.

Act of Congress—What It Gives.—The object of the Act of 1872 was to give to the discoverer his lode with surface ground adjacent to and within a certain distance on either side of that lode, and, to avoid questions of vein identity, to give him in addition all other veins within his surface location; but that if the vein originally discovered was not followed by a survey which included such vein, the surface ground allowed to the discovery vein and the side veins additionally granted, could not be construed to include the surface and the side veins within a lot of ground which did not contain the original vein first discovered. *Patterson vs. Hitchcock*, 3 Col. 533.

When Surface Lines Cannot be Changed.—Under the mining laws of the United States, unaided by any supplementary miners' rules, there is no way of locating a quartz vein, except by marking out surface lines, and when these lines have been marked, they cannot be changed so as to take in ground that has been located by others prior to such attempted change. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nevada 312.

Quartz—Loose and Solid.—The first locator of a quartz lode is not confined simply to the solid quartz actually embodied in the bed rock, but is entitled to the loose quartz rock and decomposed material, which were once a part of the lode, and are now detached, so far as the general formation of the ledge can be traced. *Brown vs. '49 and '56 Quartz Mining Company*, 15 Cal. 152.

Departure from Side Lines.—If a lode in its onward strike departs from the side lines of the patented location, the plaintiff in ejectment is not entitled to recover. *Johnson vs. Buell*, 4 Colorado 557.

Followed to any Depth—Adjoining Lands.—Section two of the Act of Congress of July 26, 1866, clearly permits the patentee of a lode mining claim to follow the lode in its descending course to any *depth*, although in its downward trend it is carried by dips, angles and variations, into the adjoining land. *Wolfley vs. Lebanon Mining Co.* 4 Col. 112.

Judgment—Surface and Lode.—When a miner locates a portion of the surface, and also a lode or ledge following its dips, angles, and spurs, he may have his common law judgment for the surface, and also a judgment following the lode under other public lands. *Bullion M. Co. vs. Crœsus G. & S. M. Co.*, 2 Nev. 168.

Discovery of Vein after Location.—A location is made valid by the discovery of a vein or lode at any time after the location, provided that such discovery is made before any valid location of the same claim by other persons. *North Noonday M. Co. vs. Orient M. Co.*, 1 Federal Reporter 522.

Subsequent Locator.—A subsequent locator has no right to object that the first location was not sufficiently marked on the ground at the time of the location, or before recording, provided that such first location was sufficiently marked on the ground before any valid subsequent location of the same claim. *North Noonday M. Co. vs. Orient M. Co.*, 1 Federal Reporter 522.

How Marked.—A location to a mining claim must be distinctly marked on the ground, so that its *boundaries* can be readily traced, but the law does not define

or prescribe what kind of marks shall be made, or upon what part of the ground or claim they shall be placed. Any marking on the grpund claimed by stakes, mounds and written notices, whereby the *boundaries* can be readily traced, is sufficient if the centre line of a location of a lode claim lengthwise be marked by a prominent stake or monument at each end thereof, upon one of which is placed a written notice, showing that a locator claims the length of said line upon the lode from stake to stake, and a specified number of feet in width on each side of said line, such location is so marked that the boundaries may be readily traced; and, so far as the marking of the location is concerned, is a sufficient compliance with the law. *North Noonday M. Co. vs. Orient M Co.*, 1 Federal Reporter 522.

Estoppel. — When A. first locates a ledge on certain croppings extending eight hundred feet northward and southward, B. afterwards locates a claim near by and is encouraged to go to work by A., who declares it to be his opinion that there are two ledges and that their claims will not interfere. Afterwards it turns out there are in fact two distinct ledges running into the earth at different angles, and widely diverging as they go down, but both mingling their croppings together where A. made his older location. The declaration of A. is evidence he located but one ledge, and may operate as an estoppel against his claiming both. *Van Valkenburg vs. Huff*, 1 & 2 Nevada 115.

Suit to Recover a Blind Lode.—When a suit is brought for a blind ledge bounded by walls found at the depth of two hundred feet below the surface, the ledge only and no part of the surface can be recovered. *Bullion Mining Co. vs. Cræsus M. Co.*, 2 Nevada 168.

Indivisibility of Mines—Partition.—Mines in land, when opened, are, from their nature, indivisible, and neither partition can be made at law, nor dower assigned by metes and bounds. The only partition that can be made is to order a sale and divide the proceeds. *Lenfers vs. Henke*, 73 Ill. 405.

Possessory Claims — Partition. — When a mining claim upon the public lands is claimed and possessed by several as joint tenants, tenants in common, or as coparceners, or even as partners, such several interests or estates are in the nature of an estate of inheritance, and liable to be partitioned between the several claimants the same as other real property. *Hughes vs. Devlin*, 23 Cal. 501.

Definition of Vein or Lode.—A vein or lode authorized to be located, is a seam or fissure in the earth's crust filled with quartz or some other kind of rock in place, carrying gold, silver, or other valuable mineral deposits named in the statute. It may be very thin or many feet thick, or irregular in thickness, and it may be rich or poor, provided it contains a trace of any of the metals named in the statute. *North Noonday M. Co. vs. Orient M. Co.*, 1 Federal Reporter 522.

Other Veins.—Where a valid location is made upon a vein or lode discovered, the locator is not only entitled to the vein discovered, but to every other vein and lode throughout its entire depth, the top or apex of which lies within the surface lines of the claim extended vertically downwards, to which no right had attached in favor of other parties at the time the location became valid, although such veins or lodes may so far depart from a perpendicular as to extend outside of the vertical side-lines. *North Noonday M. Co. vs. Orient M. Co.*, 1 Federal Reporter 522.

MINE.

Distinction Between Mine and Quarry.—In a quarry the surface is removed, and in mining the beginning only is on the surface, and a roof is left overhead. *Darvill vs. Roper*, 3 Drewry 298; S. C., 24 L. J. Ch. 779; see *Cleveland vs. Meyrick*, 37 L. J. Ch. 125; S. C., 17 Law Times R. (N. S.) 238; *Brown vs. Chadwick*, 7 Irish C. L. 101.

The distinction between mines and quarries stated at length. *Listowell vs. Gibbings*, 9 Irish C. L. 223.

Quarry and Mine.—Whether a working be a mine or a quarry is a question of fact. And the court will not decide as matter of law, that a freestone bed worked underground through a level, is a mine. *Rex vs. Dunsford*, 4 Nev. and Man. 349; S. C., 2 A. & E. 568; S. C., 1 H. & W. 93.

Mine and Quarry—Distinguished.—In order to determine whether an excavation in the earth constitute a mine or a quarry, we are to look to the mode in which the substance is obtained, and not its chemical or geological character. *Rex vs. Brettell*, 3 B. & Ad. 424.

Whether an excavation be a mine or a quarry is a question of fact; a stone working where the stone is won by sinking the shafts perpendicularly to the stratum which lies considerably below the surface, and the working the stratum by roads and gateheads and raising the stone to the surface by machinery; or carrying it underground through a tunnel, in the same way as coal is usually got, as well as iron ore, constitute

the working of a mine. *Rex vs. Sedgley*, 2 B. & Ad. 65.

Purchaser May Conceal Mineral Worth.—A person who knows that there is a mine on the land of another, of which the latter is ignorant, may nevertheless buy it. The ignorance of the vendor does not of itself render the transaction fraudulent on the part of the purchaser. *Harris vs. Tyson*, 24 Pa. St. 347.

Clay Pits.—"Clay pits," excavations where clay for fire-brick and pottery purposes is obtained, worked by shafts and like coal beds in this and other respects, are mines. *Rex vs. Brettell*, 3 B. & Ad. 424.

Lime Works.—Lime works consisting of a quarry and kiln are not a mine. *Rex vs. Alberbury*, 1 East. 534.

MINERALS.

Various Meanings.—The various meanings of the word minerals given and considered. *Darville vs. Roper*, 3 Drewry 298; S. C. 24, L. J. Ch. 779.

Extent of Term.—Everything except the surface ground which is used for agricutural purposes, whether gravel, marble, fire-clay, or the like, comes within the word mineral, when there is a reservation of the mines and minerals from a grant of land. *Midland Railway Co. vs. Checkley*, Law R. 4, Eq. 24.

Minerals Not Sufficient to Work.—There is no certain criterion to determine between mineral lands and those that cannot be classed as such; lands may contain the precious metals, but not in sufficient quantities to work them as mines; the matter considered. *Ah Yew vs. Choate*, 24 Cal. 562.

California Mines—Burden of Proof. An applicant for patent under the Act of Congress of July 23, 1866, entitled "An Act to quiet land titles in California," must not only aver, but prove, that the lands contain no mines of gold, silver, copper or cinnabar. *The Secretary vs. McGarrahan*, 9 Wall. 299. Mandamus to compel the issuance of a patent under that act cannot be sustained. *Id.*

Railroad Exceptions — Mineral Lands not Granted.—The clause in the Patent of the United States to the Western Pacific Railroad Company for land granted to aid the construction of its railroad, which excepts "all mineral lands, should any be found to exist in the tracts described," is equivalent to an exception of all the subdivisions which were mineral lands. "In other words, the patent grants all of the tracts named in it which are not mineral lands." *McLaughlin vs. Powell*, 50 Cal. 64. The fact cannot be assumed that all the lands described in such patent are mineral lands, as the exception does not necessarily extend to all the tracts granted. *Id.*

Railroad Exceptions—Quicksilver.—The court assumes, for the purposes of a decision, that lands containing cinnabar or quicksilver, are mineral lands within the meaning of the act of Congress of July 1, 1862, granting lands to the Western Pacific Railroad Co. *Id.*

Metalliferous Ores—Paint Stone—By a conveyance of all "mines and minerals," the grant does not embrace anything in the mineral kingdom, as distinguished from the animal and vegetable kingdom.

But the expression cannot be restricted to "metalliferous ores." And it includes mineral deposits in strata or beds as well as veins. And in this particular case it applied to a deposit of "paint stone" found on the premises, although when the deed was made the land may have been supposed to be valuable for copper ore alone. *Hartwell vs. Camman*, 2 Stock. Ch (N. J.) 128.

Stone.—The term "mineral" is more frequently applied to substances containing metals, but in its proper sense includes all fossil bodies or matters dug out of mines; in this sense, beds of stone may be included in the word minerals. *Rosse vs. Wainman*, 14 M. & W. 859; S. C. 2 Exch. 800; S. C. 15, L. J. Exch. 67.

Stone.—Stone taken from quarries is a mineral. *Micklethwait vs. Winter*, 6 Exch. 644; S. C., 5 Eng. L. & E. 526; S. C., 20 L. J. Exch. 313; *Midland R. Co. vs. Checkley*, Law R., 4 Eq. 24.

Asphaltum.—Asphaltum is included in the exception in certain royal grants in the province of New Brunswick of "all coals, and also all gold, silver, and other mines and minerals." *Gesner vs. Gas Co.*, 1 James (Nova Scotia) 72; 2 Allen (N. B.) 595.

Oil.—Oil is a mineral, and is included in the Act of 1850, relating to tenants in common, of minerals under the general enumeration of "other minerals." *Thompson vs. Noble*, 3 Pgh. 201.

Oil.—Oil is a mineral. *Kier vs. Peterson*, 41 Pa. St. p. 357.

Petroleum.—The peculiarities of petroleum as a fluid, and yet a mineral, stated. *Dark vs. Johnston*, 55 Pa. St. 164.

China Clay.—A bed of China clay is included in a reservation of mines and minerals. *Hext vs. Gill*, Law R. 7; Ch. App. 699; S. C. 3 Moak, 574.

Title to Several Kinds of Minerals.—The title to different kinds of minerals under the same land may be in different owners. *Curtis vs. Daniel*, 10 East 273.

MINERAL LANDS.

Construction — Uniform Policy. — In construing a particular or local Act of Congress, the uniform legislation of the government in regard to its lead ore lands will be examined, to aid in the interpretation of such statute. *U. S. vs. Gear*, 3 How. 120.

Equivocal Words.—Where the court perceives a settled policy in regard to a particular class of lands, especially such as are supposed to be of peculiar value, no equivocal words in the statute will be sufficient to allow a departure from such a policy. *Atty. Gen. vs. Smith*, 31 Mich. 360.

No Title Accrues Against the U. S. —No title to the public lands, whether mineral or otherwise, will accrue to any person against the United States by prescription, adverse possession, or estoppel *in pais*. *Doran vs. Central Pacific R. R. Co.*, 24 Cal. 245.

The title of the United States can only pass from the United States, by means of an Act of Congress making a grant or authorizing a grant to be made through some person or officer. *Id.*

Particles of Gold.—The mere fact that land contains particles of gold or veins of gold-bearing rock, does not necessarily impress it with the character of "mineral land," within the meaning of Acts of Congress granting lands to the C. P. R. R., but reserving from the grant mineral lands. *Alford vs. Barnum*, 45 Cal. 482.

Railroad—Ownership of Minerals. —Where land is condemned for railroad purposes, the company owns the earth and minerals above the level of the track, if their excavation be necessary for the construction of the road; minerals lying below the level of the road, and whose excavation is not necessary, belong to the owner of the land condemned. *Evans vs. Haefner*, 29 Mo. 141. See *Lyon vs. Gormley*, 53 Pa. St. 261.

Railroad Grant — Reservation of Minerals.—In ejectment against a defendant in possession of a portion of land described in the United States patent to a railroad, which reserves mineral lands, the defendant is entitled to show that the demanded premises are mineral lands, and therefore not parcel of the grant. *McLaughlin vs. Powell*, 50 Cal. 64.

MINING CLAIM.

Term Defined.—Mining claim is the name given to that portion of the public mineral land which the miner takes up and holds, in accordance with the mining laws, local and statutory, for mining purposes, and the term includes the vein specifically located, all the surface ground located on each side of it, and all other veins or lodes having their apex inside the surface lines. *Mount Diablo M. Co. vs. Callison*, 5 Sawyer 439; *Mallett vs. Uncle Sam M. Co.*, 1 Nev. 194; *McKeon vs. Bisbee*, 9 Cal. 137.

How Held.—A mining claim on the public domain may be held either by actual occupancy, and the exercise of control over it by distinctly indicating the boundaries by monuments and marks, or by occupancy in accordance with the local mining customs. *Hess vs. Winder*, 30 Cal. 349.

Must be Located.—Land must be marked out and taken possession of before it can be termed a mining claim. *Id.*

Subject to Execution.—A mining claim on the public domain is property, and may be sold on execution. *Id.*

Real Estate.—Mining claims in Utah are real property, and pass by deed. *Houtz vs. Gisborn*, 1 Utah 173.

Personal Property. — A possessory right or "claim" on the public mineral lands is personal property. *Stewart vs. Chadwick*, 8 Iowa 463.

A miner's claim, being a mere possessory right on public lands, is personalty, and may be sold and conveyed by the administrator. (So held with regard to a claim in Montana.) *Corbett vs. Berryhill*, 29 Iowa 157.

Estate of the Locator. — Persons claiming and in the possession of mining claims upon the public lands of the United States, are, as between themselves and all other persons except the United States, owners of the same, having a vested right of property founded on their possession and appropriation of the land containing the mine. *Hughes vs. Devlin*, 23 Cal. 501.

Freehold Estates — Abandonment. —Claims to public mineral lands are recognized as titles, as legal estates of freehold, for all practical purposes, except some doctrine of abandonment not perhaps applicable to such estates. *Merritt vs. Judd*, 14 Cal. 60.

(*See Location, Lode, Placer.*)

MINING GROUND.

Technical Meaning of the Words. —The words "mining ground," when used in a deed, have a technical meaning. They refer to that interest which a mere occupant of the mine has in the same. They are not the words used when a fee simple or leasehold interest in real estate is to be conveyed. *Hale & Norcross G. & S. M. Co. vs. Storey Co.*, 1 & 2 Nevada 83.

NAME.

How Imposed upon Lode.—Placing a notice of location headed with a certain name upon a lode of ore, is to christen it with such name. *Phillpotts vs. Blasdel*, 8 Nevada 61.

Mining Ledge may have Several Names.—One and the same ledge may have two names, by which it may be known indifferently; and it may even become better known under a name derived from a subsequent and invalid location than under the name given it in an earlier and valid location. *Id.*

Sale of Mine by Another Name.—When a person conveys a lode of ore, we have only to ascertain by the best means in our power what lode he meant; and if we can do so, it makes no difference that he has called it by a name illigitimately acquired by or applied to it. *Id.*

Description at Time of Contract.—Where the word "Pocotillo" mine is used in a contract to designate certain mining ground therein specifically described; *Held*, that it could not be claimed that a larger tract of ground, afterwards known as the Pocotillo mine, was intended. *Brandon vs. Pocotillo S. M. Co.*, 5-6-7 Nevada 499.

NOTICE.

Location Notice—How Given.—The usual mode of taking up mining claims is to put upon the claim a written notice that the party has located it, and this taking up and giving notice may be done by a party personally, or by any one for him, or with his assent or approval; and whenever the appropriation is made by an agent having authority from a principal to make it, the act is complete, and the title vests in the principal, and the agent, by his mere act, cannot subsequently divest it. *Gore vs. McBrayer*, 18 Cal. 582.

Where to be Posted.—In order to hold a mining ledge it is not necessary that the notice of location should be placed on the ore or any part of the vein or lode; it is sufficient if it be placed in such reasonable proximity and relation to the ledge as, in connection with the work done under it, to give notice to all comers what ledge is intended. *Phillpotts vs. Blasdel*, 8 Nevada 61.

When can not be Changed.—If a mining custom allows a person to locate a lode or vein for himself and others by placing thereon a notice, with his own name and the name of those whom he may choose to associate with him appended thereto, designating the extent of his claim; and one person thus locates a lode for himself and several others, some of whom have no knowledge of the location. the persons who have no knowledge of the location by the same become tenants in common with the locator and the others, and cannot be divested of their interest by the locator afterwards tearing down the notice and posting up another omitting their names, unless this is done with their knowledge and consent. *Morton vs. Solambo C. M. Co.*, 26 Cal. 527.

Changing Course of Vein after Notice is Recorded.—The notice as recorded was afterwards changed by striking out "westerly" and "easterly" as to the course of the veins and inserting the words "northerly" and "southerly:" *Held*, the alteration having been made without any fraudulent intent, that the change was immaterial and did not vitiate the notice. *Gleeson vs. Martin White M. Co*, 13 Nev. 442.

Changing Names of Locators after Notice has been Recorded.—Where the original notice of location was recorded and afterwards changed by the erasure of one of the names of the locators and the insertion of another: *Held*, that the notice and record, as so changed, was valid as to outsiders. *Id.*

Misdescription.—A misdescription in the notice of the claimant to a quartz-lead, posted up near the premises, in pursuance of the requirements of the mining laws of the district in which the lead is situated, and where the lead is underground and undeveloped, will not vitiate the claim. *Johnson vs. Parker*, 10 Cal. 446.

Prospecting Contract.—Where G., McB., and others verbally agreed to prospect for quartz, and to be equally interested in claims taken up, and McB. discovered a claim and located it, by putting up a written notice with G's. and other names on it, appropriating the lead: *Held*, that G's. right attached by these proceedings, and could not be divested by the mere act of McB. in taking down the notice and putting up other notices with other names. *Gore vs. McBrayer*, 18 Cal. 582.

Paying Channels in Claim.—If a company locates a mining claim of a certain width, extending through a mountain from base to base, and afterwards another company succeeds to their possession, whatever it was, and puts up a notice stating that its claim comprises the claim held by the old company, * * * and comprises the channel then existing, with its dips and angles, through the mountain, the latter company is not restricted by this notice to one paying channel within the claim. *Table Mountain Tunnel Co. vs. Stranahan*, 31 Cal. 387.

ORE.

Words "Silver Bearing Ore" Imply Severance from Freehold.—The words "Silver Bearing Ore," as used in an indictment charging grand larceny of it, mean a portion of vein matter, which has been extracted and separated from the mass of waste rock and earth, and imply severance from the freehold. *State vs. Berryman*, 8 Nevada 262.

PARTNERSHIP.

What Constitutes a Mining Partnership.—If two or more persons acquire a mining claim for the purpose of working the same and extracting the mineral therefrom, and actually engage in working the same, and share according to the interest of each, the profit and loss, the partnership relation subsists between them, although there is no express agreement between them to become partners, or to share the profits and losses. *Duryea vs. Burt*, 28 Cal. 569.

A Mining Partnership.—An agreement between one or more persons who claim an undeveloped mine, and another person, that if the latter will devote his labor and skill in exploring and developing the mine, the former will furnish him with tools and provisions, and give him a share in the mine if it proves valuable, and a joint working of the mine and sharing in the profits by the parties after development, constitutes one of those qualified partnerships, common in California, known as mining partnerships. *Settembre vs. Putnam*, 30 Cal. 490.

Prospecting Partnership — How Formed — Rights of Partners. — An agreement made between parties, by which some of them prospect for gold, and the others furnish money and provisions, for which they are to receive interests in the mining grounds that may be discovered, constitutes a prospecting partnership, and those who furnish the money and provisions are entitled to pre-empt and hold mining claims under the laws of a district, which provide that claims shall be allowed the discoverers for their prospecting partners. *Boucher vs. Mulverhill*, 1 Montana 306.

Share of Expenses.—If one partner or tenant in common, after having become associated with his co-partners in the development of a claim, voluntarily leaves it in the possession of his co-tenants, and refuses to bear his just proportion of the expenses incurred by them in the development of it, and should afterwards bring his action to recover his interest, upon a proper showing to the equity side of the Court, relief would be refused until he had paid his full proportion of the expense incurred in such development. *Mallett vs. Uncle Sam Gold & Silver M. Co.*, 1 Nevada 188.

See *Reynolds vs. Kay*, 9 B. & C. 356: *Lyell vs. Sanborn*, 2 Mich. 109; *Dickinson vs. Valpy*, 10 B. & C. 128; *Nisbet vs. Nash*, 52 Cal. 540; *Jones vs. Clark*, 42 Cal. 180; *Duryea vs. Burt*, 28 Cal. 569, and *Morrison's Mining Digest*, p. 256, *et seq.*, and p. 297.

PATENT.

Senior Patent on Junior Location.—The patent of a mining claim granted under the acts of Congress perfects the right initieted by location, and relates back to the date of location, cutting off all intervening claims, except where the patentee has neglected to adverse the claim of an intervening or later location; in which case, under the provisions of said acts, such failure is a waiver of the priority. *Eureka Cons. M. Co. vs. Richmond M. Co.*, 4 Sawyer, 317.

Patent to Land Carries the Precious Metals.—A patent from the United States for land in California, issued upon a confirmation of claims held under grants of the former Mexican Government, invests the patentee with the ownership of the precious metals which the land may contain. *Moore vs. Smaw* and *Fremont vs. Flower*, 17 Cal. 199.

Interest Passed by Patent.—A patent of land from the United States passes to the patentee all the interest of the United States, whatever it may be, in everything connected with the soil, or forming any portion of its bed or fixed to its surface; in short, everything embraced within the term "land." *Id.*

Agricultural Claim — Patent for Land Containing Gold.—The fact alone that sufficient gold has been found upon land conveyed by such patent to induce the patentee to mine for that metal, and to extract from twenty-five to thirty dollars per day, with seven or eight hands, is not sufficient to destroy the verity of such record, and make the land mineral land within the meaning of said section eight. *Ah Yew vs. Choate*, 24 Cal. 562.

Departure of Vein from Side Lines.—The survey of a mining claim for the purpose of applying for a patent from the United States, is the act of the claimant and not of the government, and if he has applied for patent before sufficient development has been made to show the strike of his vein, and if after the patent issues the vein is found to depart from the survey lines, it is lost to the patentee. The surveyor acts for the claimant, and he is not

required either to discover or show the course of the vein. *Wolfly vs. Lebanon M. Co.*, 4 Colorado, 112.

Not Retroactive.—The act of Congress of July 26, 1866, is prospective in its operation, and does not qualify the effect of a patent issued before its passage. *Union M. Co. vs. Ferris*, 2 Saw. 176.

Where land has been entered prior to the passage of the act of July 26, 1866, it is unaffected by that act, the same as if patented, by reason of the relation of the patent to the date of entry. *Union M. Co. vs. Dangberg*, 2. Saw. 450.

Vein Cannot be Followed Beyond Side Lines.—Local customs which might have existed, allowing the owner to follow the course of the discovered lode, would be subordinate to the acts of Congress, and could not enlarge the grant of a patent under the terms of the act of 1866. *Wolfly vs. Lebanon M. Co.*, 4 Col. 112.

Proof of Receiver's Receipt.—To admit in evidence a certificate of entry of the register of the United States land office showing a mining claim in controversy to have been entered for patent, it is necessary to first prove the signature of the register. *Jackson vs. McMurray*, 4 Col. 76.

PLACER CLAIM.

Occupied Jointly.—Placer claims may be located and occupied jointly. *Chapman vs. Toy Long*, 4 Sawyer 28.

Statutory Construction — Act Relating to Mining Claims—Record of Discovery.—At the trial of this action to determine the right to the possession of certain placer mining ground, M. offered evidence to prove that he made and filed, in the office of the county recorder, a statement of his discovery of the ground. The statute, approved May 8, 1873, provides that this statement shall be made and filed when, "any mining claim upon any vein or lode bearing * * * valuable deposits" is discovered. *Held*, that a vein or lode bearing valuable deposits does not include a placer mining claim, and that the discoverer of placer mining ground is not required, by the laws of the Territory, to make or file for record a statement of its discovery. *Held*, also, that the evidence is inadmissible. *Maxon vs. Wilkinson*, 2 Montana 421.

Definition — Distinguished from Vein.—"Placers are superficial deposits which occupy the beds of ancient rivers or valleys." *Id.*

The distinction between veins and placers given. *Id.*

A vein does not include a placer deposit. *Id.*

POSSESSION.

Vested Right of Property.—Persons claiming and in the possession of mining claims upon the public lands of the United States are, as between themselves and all other persons except the United States, owners of the same, having a vested right of property founded on their possession and appropriation of the land containing the mine. *Hughes vs. Devlin*, 23 Cal. 501.

Rights of Miners.—A miner appropriating a piece of the public domain for mining purposes has a right to the exclusive possession of the ground taken up. *Gottschall vs. Melsing*, 1 & 2 Nevada 704.

Possession prima facie Evidence of Title.—The plaintiff need not show, in the first instance, that he was in possession in accordance with the local laws, but may (as a vendee under a deed may as to other land) make a *prima facie* case upon possession, and this is enough until the defendant shows that the possession is wrongful because in violation of rules which justify him in going upon the premises and working them. *English vs. Johnson*, 17 Cal. 107.

Entry for Survey is Possession.—Plaintiff was in actual possession of a placer claim; defendant surveyed the premises for patent, and plaintiff filed his adverse claim and brought a suit in ejectment to support it: *Held*, that defendant's entry for the purpose of survey was a sufficient possession to enable plaintiff to maintain ejectment against him for the recovery of the premises; That plaintiff having proved an actual occupancy, though without connecting it with any record or paper title, and without showing the mining rules or any compliance with them, had made out a *prima facie* case sufficient to justify a recovery, until attacked by a prior possession or other title in the defendant. *Sears vs. Taylor*, 4 Col. 38.

Possession Presumes Title.—In actions of ejectment against a mere intruder (a defendant offering no evidence), proof of possession in the plaintiff and and an entry amounting to an ouster by defendant, is sufficient to support a verdict. *Sears vs. Taylor*, 4 Col. 38.

Mineral Lands—Occupants of.—The public mineral lands of this State are open to the appropriation of any one; and the first one occupying any portion of the same makes it his by the act of occupancy; and once his, it continues his until he manifests his intention to part with it in some manner known to the law. *Richardson vs. McNulty*, 24 Cal. 339.

Deeds.—Whether deeds relied on in

addition to possession have been properly or improperly admitted, becomes immaterial, where the testimony is sufficient to sustain a verdict for the party on his possession alone. *Jackson vs. McMurray*, 4 Col. 76.

Possession of One Member of a Company.—The possession of a mining claim by a company composed of several persons, is the possession of each one of its members of his undivided share. *Patterson vs. Keystone Mining Company*, 30 Cal. 360; *Waring vs. Crow*, 11 Cal. 366.

Mining Claim—How Defined.—A mining claim must be in some way defined as to limits, before the possession of or working upon part gives possession to any more than the part so possessed or worked. But when the claim is defined, and the party enters into in pursuance of mining rules and customs, the possession of part is the possession of the entire claim. *Attwood vs. Fricot*, 17 Cal. 38.

Possession — Regulated by Local Rules.—Mining claims are held by possession, but that possession is regulated and defined by usage and local and conventional rules; and the "actual possession" which is applied to agricultural land, and which is understood to be a *possessio pedis*, cannot be required in case of a mining claim, in order to give a right of action for the invasion of it. *Attwood vs. Fricot*, 17 Cal. 38.

Possession as Title.—A party in possession of public mineral land is entitled to hold it as against all the world—the government excepted, if the land belong to it—subject only to the qualification that, upon land taken up for other than mining purposes, a right of entry for such purposes may attach. *Lentz vs. Victor*, 17 Cal. 271.

Claim Distinctly Marked—Possession of Part is Possession of the Whole.—Where a claim is distinctly defined by physical marks, possession taken for mining purposes embraces the whole claim thus characterized, though the actual occupancy or work done be only on or of a part, and though the party does not enter in accordance with mining rules, or under a paper title. The rule which applies to agricultural lands, and holds to a more strict interpretation of a *possessio pedis*, does not apply to such a case. *English vs. Johnson*, 17 Cal. 107.

Character of Possession.—The character of the possession necessary to work mining claims will vary with the nature of the mines, the mode adopted in working them, and, perhaps, with the character of the country. *Correa vs. Frietas*, 42 Cal. 339.

Early Customs on the Pacific Coast.—In the early days in Nevada, the actual transfer of the possession of a mining claim with a view of passing the title, followed by an actual possession of the transferee, acquiesced in by the party transferring it, was a valid transfer of such claim. Any other ruling would disturb many old and valuable titles on the Comstock lode. *Kinney vs. Cons. Vir. Co.*, 4 Saw. 451.

Vein Opened at Different Points—Actual and Constructive Possession.—While property owned by the same person was worked at different points, under different locations, upon separate discoveries, under different names—the Elkhorn Lode and the Casket Lode—the owner, A., conveyed the Elkhorn Lode to B., delivering possession of the Elkhorn works, but retaining possession of the Casket works. By subsequent development, the Elkhorn Lode and Casket Lode were shown to be the same: upon the question as to which party was in possession of the Casket workings, *Held*, that the constructive possession of the grantee must, as matter of fact, yield to the actual possession retained by the grantor. *Hugunin vs. McCunniff*, 2 Colorado, 367.

Actual Possession.—A person who has purchased a mining claim which had been properly located and marked out on the ground, and who is, personally or by agents, upon the claim, working and developing it, and keeping up the boundary stakes and marks thereof, is not merely in the constructive possession of such claim, by virtue of mining laws, but is in the actual possession of the whole claim. Such possession is a *possessio pedis*, extending to the boundary lines of the claim. *North Noonday M. Co. vs. Orient M. Co.*, 1 Federal Reporter 522.

Mode of Holding a Mining Claim.—A mining claim on the public domain may be held either by actual occupancy, and the exercise of control over it by distinctly indicating the boundaries of it by monuments or marks, or by occupancy in accordance with the local mining customs. *Hess vs. Winder*, 30 Cal. 349.

Where no Mining Laws Exist.—Where no mining laws exist, the miner locating a claim would hold only by actual occupancy, and by such work for the development of the mine as would, under all the circumstances, be deemed reasonable, and his right of possession would only be continued by occupancy and use. *Mallett vs. Uncle Sam G. & S. M. Co.*, 1 & 2 Nevada 157.

Principle of Constructive Possession.—The condition of the possessor in

such instances is no worse than that of the occupant of other real estate, in which case the principle above stated applies. But this principle does not touch the case of an entry into possession in pursuance of mining rules and regulations, as for a forfeiture or abandonment, etc., but applies where possession is taken independently of such rules. *Attwood vs. Fricot*, 17 Cal. 38.

Mining Ground, How Held.—A party claiming mining ground not actually possessed and worked, and beyond the *possessio pedis*, must show his right thereto by constructive possession, and he can show such constructive possession only by physical works or monuments, or by the local mining laws and rules, and compliance therewith. *Roberts vs. Wilson*, 1 Utah 292.

Constructive Possession. — Actual possession of a portion of a mining claim, according to the custom of miners, in a given locality on the Yuba river, extends by construction to the limits of the claim held in accordance with such customs. *Hicks vs. Bell*, 3 Cal. 219.

Working a Level.—The possession of a level in a mine on a lode gives possession for the length of that level from the surface to the centre of the earth. *Hugunin vs. McCunniff*, 2 Col. 367.

Constructive Possession under Deed.—As to the extent of a miner's possession under a written claim or color of title, his possession, except as against the true owner or prior occupant, is good to the extent of the whole limits described in the paper, though the possession be only of a part of the claim. *English vs. Johnson*, 17 Cal. 107.

Constructive Possession—How Established.—Constructive possession can only be established by the proof of three facts, to wit: 1st. That there were local mining customs—rules and regulations in force in the district embracing the claims; 2d. That particular acts were required by such mining laws or customs to be performed in the location and working of claims, as authorized by such laws, and 3d. That plaintiff has substantially complied with these requirements. *Pralus vs. Jefferson G. & S. Mining Co.*, 34 Cal. 558.

Proofs—How Made—Actual Possession.—Each party must prove his claim to the premises in dispute, and the better claim must prevail. Actual possession makes out a *prima facie* case for the contestant, and throws upon the defendant the burden of proving a superior right in himself.—*Golden Fleece vs. Cable Consolidated Mining Co.*, 12 Nevada 312.

Under Parol Sale, or Unrecorded Bill of Sale.—The possession of one claiming under a parol sale, or unrecorded bill of sale, in order to impart notice to a subsequent purchaser, need not be evidenced by an actual inclosure or anything equivalent thereto. *Patterson vs. Keystone Mining Company*, 23 Cal. 575.

Action Under Section 254 of California Practice Act.—To maintain an action to quiet title to mining claims on the public domain, under section two hundred and fifty-four of the Practice Act, the plaintiff must establish an actual or constructive possession in him at the time of commencing the action. *Pralus vs. Jefferson G. & M. Co.*, 34 Cal. 558.

True Title Outstanding.—In actions where prior possession is relied on by the plaintiff, the defendant cannot justify his entry by showing the true title outstanding. *Richardson vs. McNulty et al.*, 24 Cal. 339.

Undivided Interest.—The owner of an undivided interest in a mine is entitled to the possession of the whole mine, as against one who has not title to any portion of the mine. *Melton vs. Lombard*, 51 Cal. 258.

Acts as Proof of Possession.—No acts are required as evidence of the possession of a mining claim, other than those usually exercised by the owners of such claims. A miner is not expected to reside on his claim, nor build on it, nor cultivate it, nor enclose it. He may be in possession by himself, or by his agents or servants. *English vs. Johnson et al.*, 17 Cal. 107.

Work Evidencing Possession. — Going on the lead to work it, or even work done in proximity and in direct relation to the claim, for the purpose of extracting or preparing to extract minerals from it—as, for example, starting a tunnel a considerable distance off, to run into the claim—would be a possession of the claim within the meaning of the rule. *English vs. Johnson*, 17 Cal. 107.

Evidence of Possession.—To prove a right to the possession of the ground, M. offered evidence to prove that he dug a ditch after the filing of his adverse claim in the land office, to mine the ground, and that he occupied a dwelling house and blacksmith shop upon the ground. *Held*, that the evidence is not admissible, and does not tend to prove that M. possessed the ground as a miner or that it is mineral land. *Moxon vs. Wilkinson*, 2 Montana 421.

Proof of Actual Possession Not Necessary.—Plaintiff may sustain this

action without proving actual possession. A right to the possession is all that is necessary. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nevada 312.

What Findings Must Show. — To support a decree granting title based on actual possession of mining ground, the findings must show that the party has had possession of a definite part of the ground. *Gelcich vs. Moriarty*, 53 Cal. 217.

Action to Quiet Title to Mining Claim on Public Lands.—In an action brought under the two hundred and fifty-fourth section of the Practice Act, to quiet title to a quartz mining claim, located on the public lands of the United States, a possessory title thereto is sufficient to maintain the action by a party in possession, as against one out of possession. *Pralus vs. Pacific G. & S. M. Co.*, 35 Cal. 30.

Possession of Mining Ground — How Proved.—Proof of a clearly defined surface claim surveyed and marked by the United States Surveyor in accordance with law, including a quartz lode running with the claim, and work on the vein inside of the surface claim, and within lines of disputed ground, is proof of possession sufficient to put the defendant on proof of its right. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nev. 312.

Possession of Part of Claim.—If a party enters upon a mining claim *bona fide*, under color of title, as under a deed or lease, the possession of part as against any one but the true owner or prior occupant is the possession of the entire claim described by the paper, and this, though the paper did not convey the title. A third person could not invade the possession of the party taking it under such circumstances, and set up, as against him, outstanding title in a stranger, with which he had no connection. *Attwood vs. Fricot*, 17 Cal. 37.

Presumption as to Use of Entire Claim.—If parties are allowed by mining regulations to include within their claim land outside of that which they expect to work, it will be presumed, in the absence of proof to the contrary, that it is for the convenience of working the claims, and that its possession is necessary. *Correa vs. Frietas*, 42 Cal. 339.

Ejectment Where Possession of Part of Well Defined Claim is Shown. —Possession of mining ground acquired by an entry under a claim for mining purposes, upon a tract the bounds of which are distinctly defined by physical marks, accompanied with actual occupancy of a part of the tract, is sufficient to enable the possessor to maintain ejectment for the entire claim, although such acts of appropriation are not done in accordance with any local mining rule. *Table Mountain Tunnel Co. vs. Stranahan*, 20 Cal. 198.

Right of Possession—Parol Sale.—The right to a mining claim upon the public lands rests upon possession only, and a sale by parol by one in possession accompanied by a transfer of possession transfers the title. *Gatewood vs. McLaughlin*, 23 Cal. 178.

Presumption from Possession. — Where plaintiff claims, under purchase and location, a small tract of mineral land, with demarked limits, of which he is in possession, and there is no proof on the trial that the extent of his claim is opposed to local rules, the presumption is that his possession is rightful and not wrongful. *English vs. Johnson*, 17 Cal. 107.

Change of Possession of an Interest in a Claim.—The withdrawal of a member from a participation in the affairs of a mining company, and another taking his place and representing his undivided interest, is a change of possession of that undivided interest. *Patterson vs. Keystone M. Co.*, 30 Cal. 360.

Possession of a Claim — Rights Under.—In suits for mining claims, the Court charged the jury, in effect, that possession taken of a mining claim, without reference to mining rules, was sufficient, as against one entering by no better title to maintain the action; and further, that this possession need not be evidenced by actual inclosure, but, "if the ground was included within distinct, visible, and notorious boundaries, and if plaintiffs were working a portion of the ground within those boundaries," this was enough against one entering without title; *Held*, that the instruction was right; that, though the regular and usual way of obtaining possession of mining claims be according to the mining regulations of the vicinage, still a possession not so taken is good against one taking possession in the same way, and that the actual prior possession of the first occupant would be better than the subsequent possession of the last. *English vs. Johnson*, 17 Cal. 107.

Right of Owner to Every Portion of Mining Claim.—Evidence that a portion of a mining claim is not valuable for mining purposes is not admissible, on general principles, to prove that the owner of the claim has no right to hold such portion. *Correa vs. Frietas*, 42 Cal. 339.

Town Lot — Enclosing Mineral Land.—A party cannot, under pretense of holding land in exclusive occupancy as a town lot, take up and enclose twelve acres of mineral land, in the mining district, as

against persons who subsequently enter upon the land in good faith for the purpose of digging for gold therein, and who, in such operations, do no injury to the comfortable use of the premises as a residence, or for the carrying on of any mechanical or commercial business. *Martin & Davis vs. Browner*, 11 Cal. 12.

Entry on Land for Mining Purposes.—Where a miner enters upon land in the possession of another, claiming the right to enter for mining purposes, he must justify his entry by showing: 1. That the land is public land. 2. That it contains mines or minerals. 3. That he enters for the *bona fide* purpose of mining. And such justification must be affirmatively pleaded in the answer, with all requisite averments to show a right under the statute, or by law, to enter. *Leutz vs. Victor*, 17 Cal. 27[illegible].

RECORDS.

Local Rules.—The record is to be provided for, and its effect determined by the local laws or regulations of miners in the respective mining districts; and if they fail to provide for a record, then none is required. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nevada 312.

Accurate Description.—If a record is provided for by local rules, it must, under the provisions of the mining laws of the United States, contain an accurate description of the *locus* of the claim by reference to natural objects or permanent monuments. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nevada 312.

Contents of Record.—When a rule or custom of miners, in force, requires a location to be recorded, such recording is necessary, otherwise not; to make a valid record, it must contain the names of the locators, the date of the location, and such a description of the claim, by reference to some natural or permanent monument, as will identify the claim; but such natural objects or permanent monuments are not required to be on the ground located, although they may be, and the natural object may consist of any fixed natural object, and such permanent monument may consist of a prominent post or stake firmly planted in the ground, or of a shaft sunk in the ground. If by reference to such natural object or permanent monument the claim recorded can be identified with reasonable certainty, the record will be sufficient in this particular; otherwise, not. *North Noonday M. Co. vs. Orient M. Co.*, 1 Federal Reporter 522.

Destroyed by Fire.—Where the original records of mining claims of a certain district have been destroyed by fire, and the miners, by a resolution subsequently passed, required the claims to be re-recorded in a new book, such book may be admitted in evidence in the trial of an ejectment case for a mining claim, to show that the rules of vicinage had been complied with. *McGarrity vs. Byington*, 12 Cal. 426.

Mining Recorder — Proof as to Record of Claim when Inadmissible.—Proof of a record is irrelevant without proof of some regulations making a record obligatory, or giving it some effect. The public law does not itself create any such office as mining recorder; nor does it make the recording of claims obligatory, or give to a record any effect. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nevada 312.

Title Not Disclosed.—The record of the certificate of location of a mining claim does not necessarily disclose the title. *Patterson vs. Hitchcock*, 3 Col. 533.

RE-LOCATION.

Alien.—Where the first claimant who takes up the claim is not a citizen, or has forfeited his right by non-compliance with the mining laws, or abandoned his claim, the mining ground staked off by him is open to location by any citizen of the United States. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nevada 312; *King vs. Edwards*, 1 Montana 235.

Under Another Name.—There is no law to prevent a person from re-locating his own mining claim by a different name; and if he does so, and then conveys it by the latter name, there is no reason why the existence of the former location should invalidate the deed. *Phillpotts vs. Blasdel*, 8 Nevada 61.

Second Location when not an Abandonment of the First.—When one or more of the parties first locating mining ground afterwards made a second location upon the same lode, with the names of other parties added to the notice of location, it appearing that at the time of the second location the ground was undeveloped, and it was not known that both notices were upon the same lode, and it further appearing that the second notice was posted for the express purpose of protecting the original location; *Held*, that the second location did not of itself constitute an abandonment of the first location. *Weill vs. Lucerne M. Co.*, 11 Nevada 201.

Abandonment.—If several, as tenants in common, locate a mining claim on the public lands, and, by a failure to comply with the local mining laws, forfeit the same, it may be re-located by a part of the first locators along with others who were strangers to the first location; and the

tenants in common, whose names are left out in the notice of re-location, cease to have any interest in the mine. *Strang vs. Ryan*, 46 Cal. 33.

A New Discovery When.—The re-location of an abandoned claim by a prospector, outfitted by another under an arrangement to share equally in all discoveries, etc., treated the same as if the prospector had located a new discovery. *Murley vs. Ennis*, 2 Col. 300.

RIGHT OF WAY.

Vested Rights of Miners—Compensation—Highway.—Lands of the United States, in which miners have vested rights, cannot be taken for the public use for a highway, if there is no act of the legislature providing for a just compensation to the miners. *Robertson vs. Smith*, 1 Montana 410.

California Easement Act of 1870.—The act of 1870, providing for the condemnation of the right of way over or through a mining claim for ditches, tunnels, flumes, etc., necessary for the convenient working of another mining claim, is merely cumulative, and does not have the effect of excluding a party from the enforcement in Court of the right to construct such tunnels, ditches, flumes, etc., where that right exists independent of the statute, as by local custom. *Bliss vs. Kingdom*, 46 Cal. 651.

SALE.

See Conveyance.

Real Estate.—Mining claims are real property and pass by deed. *Houtz vs. Gisborn*, 1 Utah 173.

Verbal Sale of Real Estate.—A gold mine is real estate, and an interest therein, other than an estate at will or for a term not exceeding one year, can be transferred only by an instrument in writing. A verbal sale is not good. *Melton vs. Lambard*, 51 Cal. 258.

Bill of Sale as Evidence.—It is no objection to a bill of sale that it is not under seal, whatever may be the effect of it as evidence. *Jackson vs. Feather River Water Co.*, 14 Cal. 19; See *McCarron vs. Connell*, 7 Cal. 152.

Verbal Power to Execute a Bill of Sale.—A verbal power is sufficient to authorize an agent to sign the name of the grantor to a bill of sale of a mining claim, where the grantor has first agreed in person with the grantee upon the terms of sale. *Patterson vs. The Keystone Mining Company*, 30 Cal. 360.

Handwriting of Subscribing Witness.—A bill of sale of a mining claim is sufficiently proved when the handwriting of the subscribing witness who is absent from the State, and the execution by the vendor, is proven. And this though the subscribing witness was in the State after suit was instituted, and near the time of trial, and plaintiff used no efforts to get the testimony of the witness before he left the State. *Jackson vs. Feather River Water Co.*, 14 Cal. 19.

Dormant Partner.—Where one of the mining company acted as salesman of the firm, it cannot be pretended that he was a dormant partner, whose acts would not bind the firm. *Rich vs. Davis & Co.*, 6 Cal. 163.

District Record as Evidence.—The entry of the sale of a mining claim made by the Recorder of a mining district, in a book kept for the record and transfer of mining claims, and authorized by the mining customs and laws in force in the district where the claim is situated, is admissible in evidence to prove the sale of the claim, unless objected to. Such entry is at least secondary evidence of the sale. *St. John vs. Kidd*, 26 Cal. 263.

Assumpsit—for Money Received on Sale of Lode.—If one who is in possession of a lode holding for himself and another make sale of the property, the latter may bring ejectment against the purchaser for his part, or he may affirm the sale and sue his associate in assumpsit for his part of the purchase money. *Murley vs. Ennis*, 2 Col. 300.

Gift of a Mining Claim.—The owner of a mining claim may give away the same by a written bill of sale, and such bill of sale is not to be rejected as evidence because it was a gift. *Meyers vs. Farquharson*, 46 Cal. 190.

SALINES.

Patent—Reservation.—A grant upon entry and survey, of lands reserved by law as salines, is void. *Edwards vs. Darby*, 12 Wheat. 206.

Where a State law directs the survey of certain lands, and the reservation of salines thereon, although there be no specific direction in the act to survey and set apart the salines, such direction is implied from the necessity of the case. *Id.*

"French lick," on site of Nashville, Tennessee—case deciding whether the same had been reserved, or was open to entry under laws of North Carolina and Tennessee. *Id.*

Grants to State Springs Not Workable.—The acts of Congress granting salt springs to the State, construed as intending only salt springs which could be made of

value in the manufacture of salt; and held not to apply to a case where a well-known saline existed, but all attempts to make it of any value had failed. *Indiana vs. Miller*, 3 McL. C. Ct. 151.

Salt Lick is a Salt Spring.—A salt lick and a salt spring mean the same as used in the act of Congress, "lick" being a western term applied to a salt spring on account of the deer resorting to it to lick the salt. The distinction cannot be made referring spring to a fountain of salt water, and lick to a place where salt water appears on the surface of the ground. *Id.*

Missouri Rented Salines.—The act of December 30, 1824, relating to distress for rent of the State salines, does not apply to leases made prior thereto. *Craig vs. Barcroft*, 1 Mo. 656.

SCHOOL SECTIONS.

Michigan.—The grant of the sixteenth sections to the State of Michigan for school purposes contains no express or implied reservation of salt springs, lead mines, or minerals of any kind. *Cooper vs. Roberts*, 18 How. 179; see 20 How. 467, and 3 Wall. 332.

STATUTE OF LIMITATIONS.

Adverse Possession.—The Act of Congress of 1872, in relation to the location of mining claims and the determination of the right thereto in case of conflict, does not prevent the application of the State statute of limitations; on the contrary, an actual, exclusive, and uninterrupted adverse possession for the statutory period constitutes a complete bar. *The 420 Bullion M. Co.*, 9 Nevada 240.

SURFACE GROUND.

Common Law Modified.—The common law doctrine, that he who possesses the surface of the earth owns all to the centre of earth, is greatly modified as to the rights of miners and others on the public lands. One may be entitled to the occupancy of the surface, another to the veins of mineral running under the same land. *Bullion M. Co. vs. Cræsus G. & S. M. Co.*, 2 Nevada 168.

The Surface Ground and the Lode are not Independent Grants.—It is not the purpose of the act to grant surface ground without a discovered lode. The lode is the principal thing, and the surface ground incident thereto. *Wolfley vs. Lebanon M'g Co.*, 4 Col. 112.

Vein the Principal Object.—The vein is the principal object of the locator; the surface claim ought always to conform in its course; and end lines ought to be parallel, and at right angles to the side lines. *Gleeson vs. Martin White M. Co.*, 13 Nevada 442.

Reasonable Time to Define Claim.—The surface claim is not required to be defined immediately upon the discovery of the vein; the location is allowed a reasonable time for that purpose. *Gleeson vs. Martin White M. Co.*, 13 Nevada 442.

Surface Recovered When.—When a ledge located as such comes to the surface, the locator may recover the surface, provided the outline of the ledge is visible on the surface. *Bullion M. Co. vs. Cræsus G. & S. M. Co.*, 2 Nevada 168.

Marking of Centre Line of Surface Claim.—Where the locators of a mine having a monument, notice and work at the discovery point, post two stakes along the centre line of the claim, and one three hundred feet southeast of location monument, marked "Southeasterly stake of Paymaster," the other twelve hundred feet northwest of monument, marked "Northwesterly stake of Paymaster," these stakes being in a line with the croppings of the vein and discovery point. *Held*, a sufficient marking of the boundaries of the location of the claim, "so that its boundaries can be readily traced." *Gleeson vs. Martin White M. Co.*, 13 Nevada 442.

TAILINGS.

Pay-dirt and Tailings are Property.—The pay-dirt and tailings of a miner, which are the productions of his labor, are his property. *Jones vs. Jackson*, 9 Cal. 237.

"Tailings" Claims—Analogous to Mining Claims.—If land be valuable for the metals which it may contain, such as land on which tailings have been deposited, and it is not claimed for any other purpose, the acquisition of possessory titles to it is governed by the same rules ordinarily controlling possessory titles to mining claims. *Rogers vs. Cooney*, 5, 6 and 7 Nevada 872.

Boundaries of Ground for Tailings—Custom—Free Tailings.—The boundaries of ground for the deposit of tailings must be distinctly defined by persons locating it, so that subsequent locators may know what ground is vacant. The custom of free tailings conflicts with this rule, and the defining of such boundaries would be useless. *Lincoln vs. Rodgers*, 1 Montana 217; *Esmond vs. Chew*, 15 Cal. 137; *Logan vs. Driscoll*, 19 Cal. 623.

Who Entitled to Tailings.—Where tailings are allowed to flow upon the ground of another, he is entitled to them. *Jones vs. Jackson*, 9 Cal. 237.

Property in Mixed Tailings.—If a

miner allows his tailings to mingle with those of other miners, this would not give a stranger a right to the mixed mass. *Jones vs. Jackson*, 9 Cal. 237.

Damages by Custom—Free Tailings.—The first locators of mining ground have no right, by custom or otherwise, to allow tailings to run free in the gulch, and render valueless the mining claims of subsequent locators below them. *Lincoln vs. Rodgers*, 1 Montana 217.

Deposit for Tailings.—When a place of deposit for tailings is necessary for the working of a mine, there can be no doubt of the miner's right to appropriate such ground as may be necessary for this purpose, provided he does not interfere with pre-existing rights. His intention to appropriate such ground must be clearly manifested by outward acts. Mere posting notices is not sufficient. He must claim the place of deposit as such, or as a mining claim. *Jones vs. Jackson*, 9 Cal. 237.

Possession of Land Valuable only for Tailings.—Where a person entered on vacant land upon which tailings were deposited, for the purpose of digging them up, hauling them away and milling them, and caused a survey to be made and recorded, marked the boundaries with large posts firmly set in the ground at the corners and one in the centre of one of the sides, and thereafter continued to work the claim and build a cabin on it, which was used for storing the tools employed on the premises: *Held*, that he had a possession sufficient to maintain trespass against an intruder entering within his boundaries. *Rogers vs. Cooney*, 7 Nevada 213.

Prior Rights.—A party may take up a claim for mining purposes that has been, and still is used as a place of deposit for tailings by another; but in that case, his mining right will be subject to the prior right of deposit. *O'Keiffe vs. Cunningham*, 9 Cal. 589.

TENANTS IN COMMON.

Effect of Posting Notice.—After notices of location were posted and recorded, and the limits of the mine determined, all the locators became tenants in common. The acting locators could not dispose of the interest of their co-tenants. *Chase vs. Savage Silver Mining Co.*, 2 Nevada 9.

Action to Vindicate Title.—After the notice was put up, G. became a tenant in common of the mine, and not a partner, and could bring an action to vindicate his title against McB. or any one who excluded him or denied his right. *Gore vs. McBrayer*, 18 Cal. 582.

Real Estate—Tenants in Common.—Tenants in common of a tract of mining claims, acting under a company name, are incapable, in the company name, of taking and holding mining claims by grant, or by any other means by which title to real estate would pass. *Wiseman vs. McNulty*, 25 Cal. 230.

Possession of Tenant in Common.—The possession of one partner or tenant in common inures to the benefit of all, until such possession becomes adverse. *Mallett vs. Uncle Sam G. & S. M. Co.*, 1 & 2 Nevada 156.

Forfeiture.—Several persons owning a tract of mining claims as tenants in common, and known by a company name, have not the capacity to take or hold, in the name of the company, the interest of any one or more of the tenants in common, by forfeiture. *Wiseman vs. McNulty*, 25 Cal. 230.

Forfeiture.—In order to enforce the forfeiture of the interest of a tenant in common, some appropriate suit must be undertaken to liquidate the demand and sell his interest, or there must be clear and unequivocal proof of abandonment. *Waring vs. Crow*, 11 Cal. 360. See *Morrison's Mining Digest*, p. 370.

TIMBER.

Prior Agricultural Claim Carries the Timber.—The possession of public land in the mineral districts of this State, acquired and held in accordance with the possessory act for agricultural purposes, carries with it the right to the wood and timber growing thereon, and this right is superior to that of subsequent locators of mining claims who need, and seek to use, the wood and timber for carrying on their mining operations. *Rogers vs. Soggs*, 22 Cal. 444.

Wood and Water.—The right to mine upon public lands carries with it, as incidents, the right to the use of wood and water found on the public domain and not previously appropriated. *Tartar vs. Spring Creek Co.*, 5 Cal. 395.

Unnecessary Cutting.—The defendant occupied seventy acres of public land as mining ground, and cut timber from four acres thereof in advance of his mining operations, and disposed of the same for his own benefit, assigning as a reason therefore that by cutting the timber in advance of the mining operations the stumps would rot, and therefore be more easily removed. *Held*, that this cutting was not necessary to the mining operation and therefore unlawful. *U. S. vs. Nelson*, 5 Sawyer 68.

Mining Ground.—A person occupying a portion of the public land as mining ground under the mining laws of the United States is not bound to purchase the same, but until he does so he has a mere license to work the ground for the precious metals therein, and has no right to cut or use any timber growing or found thereon, except as the same may be necessary to enable him to mine the same conveniently. *Id.*

TITLES.

Purchaser only Takes Vendor's Title.—The purchaser of a mining claim can only acquire, by such purchase, such right or title as his vendor had at the time of the sale. *Waring vs. Crow*, 11 Cal. 366.

Severance.—There may be a severance of the title in the surface, used for agricultural purposes, and the underlying minerals. *Stewart vs. Chadwick*, 8 Iowa 463.

Quartz Claims are Real Estate—Descent—Administrator.—The statutes regulating the descent and distribution of realty are applicable to quartz claims; they are real estate. An administrator cannot maintain ejectment for their possession. *Carhart vs. Montana M. Co.*, 1 Mont. 245.

Vested Title.—Under existing legislation, the owner of a mining claim has, *in practical effect*, a good vested title to the property, and should be so treated until his title is divested, by the exercise of the higher right of his superior proprietor. His right to protect the property, for the time being, is as full and perfect as if he were the tenant for years, or for life, of his superior proprietor. As his lease is of the *mine*, he is entitled to all the remedies, for its protection, that he could claim if he were the owner, against all the world, except the true owner. *Merced Mining Co. vs. Fremont*, 7 Cal. 317.

Mining Claims and Rights—Claims to Public Lands as Titles.—In this State claims to public mineral land are recognized as titles, as legal estates of freehold, for all practical purposes, if we except some doctrines of abandonment not, perhaps, applicable to such estates. *Merritt vs. Judd*, 14 Cal. 60.

Titles to Mining Claims—How Acquired.—It is not essential that mining districts should be organized, and local rules adopted in order that mining claims may be held and the government titles acquired. A compliance with the mining laws of the United States is sufficient to secure the claim. *Golden Fleece vs. Cable Consolidated M. Co.*, 12 Nevada 312.

Neither Party has Title.—In actions to recover possession of mining claims located on the public lands, the doctrine that plaintiff, if he recover at all, must recover on the strength of his title, has no application, for neither party has any legal title. *Richardson vs. McNulty* 24 Cal. 339.

Possession as Proof of Title to Land.—The possession of agricultural land is *prima facie* proof of title against a trespasser; but, where it is shown that the party goes on mineral land to mine, there is no presumption that he is a trespasser; and the statutory presumption, that it is public land, in the absence of proof of title in the person claiming it as agricultural land applies. *Burage vs. Smith*, 14 Cal. 380.

Evidence of Title.—Where K. admitted he acquired his interest in certain company mining claims by purchase, which admission was not withdrawn, evidence that K. had acted as a member of the company, that the company had recognized him as a member, and the owner of said interest, and that he had paid assessments to the company thereon, was irrelevant and incompetent to prove title to said interest in K. *King vs. Randlett*, 33 Cal. 318.

Jury's Verdict.—The jury under a general submission found "a verdict in favor of plaintiffs with one dollar damages;" *Held*, that the verdict decided the question of title in favor of plaintiffs, and that upon it they were entitled to a decree perpetually enjoining defendants from working upon the ground claimed in the complaint; that this equitable relief was a matter of right, the denial of which by the District Court was error. *McLaughlin vs. Kelly*, 22 Cal. 211.

Title Acquired After Suit Brought.—A title to the premises acquired by plaintiffs after the commencement of the suit, will not avail, since the rights of the parties must be determined by their position at the time of the trespasses. *Hugunin vs. McCunniff*, 2 Col. 367.

Protection to Valuable Improvements.—Certain possessory rights, and rights of property in the mining region, though not founded on a valid legal title, will be protected against the miner—as valuable permanent improvements, such as houses, orchards, vineyards, growing crops, etc. *Smith vs. Doe*, 15 Cal. 100.

Not a Subject for Arbitration.—The subject matter of an action for the recovery of mining ground on public land, is regarded in this State as "a question of title to real property in fee," and therefore cannot, under section three hundred and eighty of the Practice Act, be submitted to arbitration; and if so submitted, an award

and judgment thereon will, on motion, be vacated and set aside. *Spencer vs. Winselman et al.*, 42 Cal. 479.

Title of Mining Company to Quartz Mine and Mill.—Certain real property, consisting of a quartz mine and mill, was owned and worked by a mining company consisting of M. and S., who together owned two-thirds, and C. and Y., who together owned the remaining one-third undivided interest therein. The profits and losses of the mining business were, by tacit agreement, shared by said members in proportions corresponding to their said several interests in the property. M. and S. conveyed by deed absolute their said two-thirds interest in said property to R., who immediately entered into and thereafter continued in possession of the same. A small portion only of the purchase price was paid down by R. at said sale. At the date of said conveyance the company was indebted, on account of their said mining business, in the sum of twelve thousand dollars for which afterward suit was brought against the said members of the company, and under a writ of attachment issued therein said property was levied on as the property of said M., S., C., and Y., and in due course judgment passed against them, and all their right, title, and interest in the property was sold to H., who in due course received a Sheriff's deed therefor, under and by virtue of which he thereafter claimed to own all said property. *Held*, in an action by R. against H., brought under the the 254th section of the Practice Act, that R. acquired under said deed from M. and S. the title to said two-thirds undivided interest in said property, and that H., acquired by said Sheriff's deed only the one-third undivided interest of C. and Y. in said property. *Ross vs. Heintzen*, 36 Cal. 313.

TOWN LOT.

Delay for Water—Notice Given.—A miner locating a parcel of the public domain as a mining claim has a right to the exclusive possession of the ground so taken up. A miner cannot, by notice alone, without taking steps towards development, hold a claim for five years without work or occupation; especially when there is no intention to work it except upon a very uncertain contingency. In this case a claim was located upon a spot which showed good pay if water could be had, and was worthless without water; the locator took no steps to bring water, and the natural supply was totally insufficient; meanwhile a town has been built upon and around the claim: *Held*, that the party asserting title to the property as a mining claim was rightfully nonsuited. *Gottschall vs. Melsing*, 2 Nev. 185.

Question of Fact.—Whether a town lot located by a miner, for mining purposes, is so necessary for his use to enable him to work his mine as to make his right superior to that of a pre-emptor, in accordance with the Act of Congress of July 1, 1864, in relation to town lots, etc., is a question of fact for the jury. *Courchanie vs. Bullion Mining Co.*, 4 Nevada 369.

TRESPASS.

Extent of Right of Possessor.—The owner and possessor of a mining claim on public land has a right to prevent any subsequent comer from erecting or constructing any superstructure, cut or ditch on his claim, unless the right to construct the same is given by some mining custom or regulation. *Correa vs. Frietas*, 42 Cal. 339.

No Presumption of Trespassing.—When a party enters upon mineral land for the purpose of mining, he cannot be presumed to be a trespasser; for if the land be not private property, he has the right to enter upon it for that purpose; and until it be shown that the title has passed from the government, the statutory presumption (Wood's Dig. 257) that it is public land applies. *Smith vs. Doe*, 15 Cal. 100.

Private Mineral Lands not Subject to Entry by Miners.—No license from the United States, or the state of California, to miners to enter upon the private lands of individuals, for the purpose of extracting the minerals in the soil. *Boggs vs. Merced M. Co.*, 14 Cal. 279; *Henshaw vs. Clark*, 14 Cal. 461.

Working Across Dividing Line.—When two mining claims adjoin each other, and the owners of one claim work across the dividing line and take away gold-bearing earth from the other claim, the fact that they did so in ignorance of the location of the dividing line is no excuse or justification; and it is error to admit evidence of such ignorance as an excuse for the trespass or in mitigation of damages. *Maye vs. Tappan*, 23 Cal. 306. See *Morrison's Mining Digest*, p. 378.

TUNNELS.

Enjoining Interference with Mining Right—If by local custom the owner of one mining claim has a right to construct a tunnel through an adjoining claim, in order to enable him to work his own claim, a court of equity may enjoin any interference with that right. *Bliss vs. Kingdom*, 46 Cal. 651.

Discovery of Blind Lodes.—The right of possession of veins or lodes granted by section four of the act of Congress of May 10, 1872, to tunnel owners, is dependent, among other things, upon *discovery* of the vein or lode in the tunnel. The effect of section two of the act is to give a party running a tunnel for any purpose, whether for prospecting or development, the right to pre-empt and locate any and all lodes not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface. *Corning Tunnel Co. vs. Pell*, 4 Col. 507.

WORK.

Definition of Term "Work on a Claim."—Work on a claim is work done anywhere upon the surface of it within its surface lines, or anywhere below the surface within those lines extended down vertically; and though it should be shown that the work done within the lines below the surface was also within a lode having its apex outside of such vertical surface lines, it will still be work on the claim within the meaning of section 2324 of the United States Revised Statutes. *Mount Diablo M. Co. vs. Callison*, 5 Sawyer 439.

Regulations Construed.—Where the regulations of a mining locality require that every claim shall be worked two days in every ten: *Held*, that the efforts of the owners of the claim to procure machinery for working the claim, are, by fair intendment, to be considered as work done on the claim. *Packer vs. Heaton*, 9 Cal. 569.

PART V.

MISCELLANEOUS.

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a. FORMS.

FORM 1.

Notice of Location.

Notice is hereby given that the undersigned, having complied with the requirements of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, and the local customs, laws and regulations, has located ——— linear feet on the ——— lode [twenty acres of placer mining ground], situated in ——— Mining District, ——— County, ———, and described as follows:

[*Describe the claim accurately (by courses and distances, if possible,) with reference to some natural object or permanent monument, and mark the boundaries by suitable monuments; if a placer claim is located on surveyed land, describe the legal subdivision.*]

Discovered ———, 188–. ——— ———, Locator.

Located ———, 188–. Recorded ———, 188–.

Attest:

———

———

NOTE.—Record of location notices, in absence of a District Recorder, should be made with the proper recorder of deeds for the county wherein the claim is situated. It is advisable to have these notices attested by witnesses, for locators cannot be too careful about their evidence.

In re-locations to increase width of surface ground under the local law, or to more particularly identify or describe the claim, use the above form, but state after the description that it is a re-location, and in addition, where the original location is recorded, in order that the title may revert back to the original discovery.

In locations of abandoned mines, the fact that it is such a location should be stated, and the affidavits of two or more respectable parties that such mine was abandoned and subject to re-location, should be recorded with the location notice.

Where the location is by agent, that fact should be stated after the name of the locator, thus: By Thomas Jones, agent (or attorney).

FORM 2.

Proof of Labor.

——— *of* ———, *County of* ———, *ss.*

Before me the subscriber personally appeared ———, who being duly sworn says that at least ——— dollars' worth of labor or improvements were performed or made upon [here describe claim], situated in ——— mining district, ——— county, ——— of ———, during the year ending ———, 188–. Such expenditure was made by or at

the expense of ——— ———, owners of said claim, for the purpose of holding said claim.

[Jurat.] ——— ——— (Signature).

NOTE.—The record of an affidavit like the above is *prima facie* evidence of the performance of such labor.

FORM 3.

Notice of Forefeiture.

——— County, ——— ———, 188–.

To—(names of all parties who have record title to any portion of the mine). You are hereby notified that I have expended ——— dollars in labor and improvements upon the ——— lode (describe the claim), as will appear by certificate filed ———, 188–, in the office of the Recorder of said county (or district), in order to hold said premises under the provisions of section 2324 Revised Statutes of the United States, being the amount required to hold the same for the year ending ———, 188–. And if within ninety days from the service of this notice (or within ninety days after this notice by publication), you fail or refuse to contribute your proportion of such expenditure as a co-owner, your interest in said claim will become the property of the subscriber under said section 2324.

——— ——— (Signature).

NOTE.—At the expiration of 180 days, this notice should be recorded with the affidavit of the newspaper publisher (see Form 13), that the same was published for the period of ninety days, together with the affidavit (Form 4) of the party signing the notice to the effect that one or more of the co-owners named in the published notice have not paid their share of the expenditure. This completes the record title.

FORM 4.

Affidavit of Failure to Contribute.

——— *of* ———, *County of* ———, *ss.*

——— ———, being duly sworn, deposes and says that for the year ending ———, 188–, he expended at least ——— dollars in labor and improvements upon the ——— lode [or ——— placer claim] (here describe the claim), to hold the same under the laws of the United States and of this ——— (district, Territory or State,): that due notice thereof was personally served upon ——— ———, co-owners, on the ——— day of ———, 188–, (or was duly published in the ——— ———, as appears from the affidavit of the publisher thereof): and that ——— ——— (of the said) co-owners have failed or refused to contribute their share of said expenditures within the time required by law.

——— ———.

Subscribed and sworn to before me this ——— day of ———, 188–.

——— ———.

FORM 5.

Miner's Lien.

KNOW ALL MEN BY THESE PRESENTS, That I, ———, of the county of ———, ——— of ———, do hereby give notice of my intention to hold and claim a lien, by virtue of the statute in such case made and provided, upon ——— (describe premises), with all improvements and appurtenances, situated in ——— Mining District, County of ———, ——— of ———.

The said lien being claimed and held for and on account of *work and labor done by me as* ——— *for* ———, *owner of said premises* in and upon said premises, from the ——— day of ———, A. D. 188–, to the ——— day of ———, A. D. 188–.

The total value of the said work and labor being ——— dollars, upon which there has been paid the sum of ——— dollars, leaving a balance of ——— dollars still due, owing and unpaid to me, the said claimant.

——— ——— (Signature).

——— *of* ———, *County of* ———, *ss.*

On this ——— day of ———, A. D. 188–, personally appeared before me the above named ———, and who being by me first duly sworn, on ——— oath states that the abstract of indebtedness mentioned and described in the foregoing notice, is true and correct, and that there is still due and owing to ——— from the said ———, for the ——— aforesaid, the sum of ——— dollars and ——— cents.

——— ——— (Signature).

Subscribed and sworn to before me this ——— day of ———, A. D, 188–.

(Official signature).

NOTE.—For materials insert "goods furnished and delivered to owners of said premises, for use on said premises, and which were used on said premises." Below, substitute "materials furnished, to wit: Powder, lumber, etc., as per bill annexed" in place of "work and labor."

FORM 6.

Application for Survey.

——— ———, 188–.

To ———, *United States Surveyor-General for* ———:

SIR—In compliance with the provisions of Chapter Six of Title Thirty-two, Revised Statutes of the United States, ——— herewith make application for an official survey of the mining claim known as the ——— mine, claimed by ———, located in ——— Mining District, in the County of ———, Township No. ———, Range No. ———, ——— base and meridian, in the ——— of ———, and ——— request that you will send to ——— address an estimate of the amount to be deposited, for the work to be done in your office; and that after such deposit shall have been made, you will cause the said mining claim to be surveyed by ———, United States Deputy Surveyor at ———.

Respectfully,

——— ———, Claimant.

P. O. Address, ———, ——— county, ———.

NOTE.—Survey is not required when placer-claims embrace legal subdivisions.

FORM 7.

Application for Patent.

———, *County of* ———, *ss.*

APPLICATION FOR PATENT FOR THE ——— ——— MINING CLAIM.

To the Register and Receiver of the U. S. Land Office at ———.

———, being duly sworn according to law, deposes and says, that in virtue of a compliance with the mining rules, regulations and customs, by himself, the said ———, and his co-claimants (residence of each should be stated), ———, applicants for patent herein ha— become the owner of and ——— in the actual, quiet and undisturbed possession of ——— linear feet of the ——— vein, lode or deposit, bearing ———, together with surface ground ——— feet in width, for the convenient working thereof, as allowed by local rules and customs of miners; said mineral claim, vein, lode or deposit and surface ground being situated in the ——— mining district, county of ———, and ——— of ———, and being more particularly set forth and described in the official field notes of survey thereof, hereto attached, dated ——— day of ———, A. D. 188–, and in the official plat of said survey, now posted conspicuously upon said mining claim or premises, a copy of which is filed herewith. Deponent further states that the facts relative to the right of possession of himself (and his said co-claimants hereinbefore named) to said mining claim, vein, lode or deposit and surface ground, so surveyed and platted, are substantially as follows, to wit:

(*Trace the history of the lode fully.*)

Which will more fully appear by reference to the copy of the original record of location and the abstract of title hereto attached and made a part of this affidavit; the value of the labor done and improvements made upon said ——— claim, by himself and his grantors, being equal to the sum of five hundred dollars, and said improvements consist of (*describe fully*). In consideration of which facts, and in conformity with the provisions of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, application is hereby made for and in behalf of said ——— for a patent from the Government of the United States for the said ——— mining claim, vein, lode, deposit, and the surface ground so officially surveyed and platted.

——— ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 188–, and I hereby certify that I consider the above deponent a credible and reliable person, and that the foregoing affidavit, to which was attached the field notes of survey of the ——— mining claim, was read and examined by him before his signature was affixed thereto and the oath made by him.

(Official Signature.)

NOTE.—The above is slightly changed in applying for placer-mines.

FORM 8.

Proof of Posting Notice and Diagram on the Claim.

——— *of* ———, *County of* ———, *ss.*

——— and ———, each for himself, and not one for the other, being first duly sworn according to law, deposes and says, that he is a citizen of the United States, over the age of twenty-one years, and was present on the ——— day of ———, A. D. 188–, when a plat representing the ———, and certified to as correct by the United States Surveyor-General of ———, and designated by him as lot No. ———, together with a notice of the intention of ——— and ——— to apply for a patent for the mining claim and premises so platted, was posted in a conspicuous place upon said mining claim, to wit: Upon ———, where the same could be easily seen and examined; the notice so conspicuously posted upon said claim being in words and figures as follows, to wit:

NOTICE OF THE APPLICATION OF ——— AND ——— FOR A UNITED STATES PATENT.

Notice is hereby given that in pursuance of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, ——— and ———, claiming ——— linear feet of the ——— vein, lode or mineral deposit, bearing ———, with surface ground ——— feet in width, lying and being situated within the ——— mining district, county of ———, and ——— of ———, ha– made application to the United States for a patent for the said mining claim, which is more fully described as to metes and bounds by the official plat herewith posted and by the field notes of survey thereof, now filed in the office of the Register of the District of Lands, subject to sale at ———, which field notes of survey describe the boundaries and extent of said claim on the surface, with magnetic variation at ——— east, as follows, to wit:

(*Full description by courses and distances.*)

the said mining claim being of record in the office of the Recorder of ———, at ———, in the county and ——— aforesaid, the presumed general course or direction of the said ——— vein, lode or mineral deposit being shown upon the plat posted herewith, as near as can be determined from present developments; this claim being for ——— linear feet thereof, together with the surface ground shown upon the official plat posted herewith, the said vein, lode and mining premises hereby sought to be patented being bounded on the ——— by the ——— mining claim.

Any and all persons claiming adversely the mining ground, vein, lode, premises, or any portion thereof so described, surveyed, platted and applied for, are hereby notified that unless their adverse claims are duly filed as according to law and the regulations thereunder within sixty days from the date hereof, with the Register of the United States Land Office at ———, in the ——— of ———, they will be barred, in virtue of the provisions of said statute.

——— ——— (Names of applicants.)

Dated on the ground this ——— day of ———, A. D. 188–.

Witness: (Names of witnesses.) ——— ———. ——— ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 188–, and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit and notice were read by each of them before their signatures were affixed thereto and the oath made by them.

——— ———.

NOTE.—The notice to be posted on the claim with the plat is given in the above form.

FORM 9.

Proof that Plat and Notice Remained Posted on Claim During Period of Publication.

——— *of* ———, *County of* ———, *ss.*

———,being first duly sworn according to law, deposes and says, that he is claimant (and co-owner with ———) in the ——— mining claim, ——— mining district, ——— county, the official plat of which premises, designated by the Surveyor-General as lot No. ———, together with the notice of intention to apply for a patent therefor, was posted thereon, on the ——— day of ———, A. D. 188–, as fully set forth and described in the affidavit of ——— and ———, dated the ——— day of ———, A. D. 188–, which affidavit was duly filed in the office of the Register at ——— in this case; and that the plat and notice so mentioned and described, remained continuously and conspicuously posted upon said mining claim from the ——— day of ———, A. D. 188–, until and including the ——— day of ——— ———, A. D. 188–, including the sixty days period during which notice of said application for patent was published in the newspaper.

[Jurat.]

——— ———.

(One of the applicants.)

FORM 10.

Register's Certificate of Posting Notice for Sixty Days.

United States Land Office, at ———, ———, 188–.

I hereby certify that the official plat of the ——— lode designated by the Surveyor-General as lot No. ——— was filed in this office on the ——— day of ———, A. D. 188–, and that the attached notice of the intention of ——— to apply for a patent for the mining claim or premises embraced by said plat, and described in the field notes of survey thereof filed in said application, was posted conspicuously in this office on the ——— day of ———, A. D. 188–, and remained so posted until the ——— day of ———, A. D. 188–, being the full period of sixty consecutive days during the period of publication as required by law; and that said plat remained in this office during that time, subject to examination, and that no adverse claim thereto has been filed.

——— ———, *Register.*

NOTE.—The notice posted in the office should be attached to this certificate; a copy of the notice published is the one usually posted in the Register's office.

FORM 11.

Notice for Publication in Newspaper.

Mining Application No. ——.

United States Land Office, ——— ———, ———, 188–.

Notice is hereby given that ———, whose post office address is ———, has this day filed his application for a patent for ——— linear feet of the ——— mine or vein bearing ———, with surface ground ——— feet in width, situated in ——— mining district, county of ———, and ——— of ———, and designated by the field notes and official plat on file in this office as lot No. ———, in township ———, range ———, of ——— meridian, ———. Said lot No. ——— being described as follows, to wit: Beginning at, etc.

Magnetic variation ———, containing ——— acres.

The location of this mine is recorded in the Recorder's office of ———, in book ——— of ———. The adjoining claimants are ———.

Any and all persons claiming adversely any portion of said ——— mine or surface ground are required to file their adverse claims with the Register of the United States Land Office at ———, in the ——— of ———, during the sixty days period of publication hereof, or they will be barred by virtue of the provisions of the statute.

——— ———, *Register.*

FORM 12.

Agreement of Publisher.

The undersigned, publisher and proprietor of the ———, a ——— newspaper, published at ———, county of ———, and ——— of ———, does hereby agree to publish a notice, dated United States Land Office, ———, required by Chapter Six of Title Thirty-two, Revised Statutes of the United States, of the intention of ——— to apply for a patent for his claim on the ——— lode, situated in ——— mining district, county of ———, of ———, and to hold the said ——— alone responsible for the amount due for publishing the same. And it is hereby expressly stipulated and agreed that no claim shall be made against the Government of the United States, or its officers or agents, for such publication.

Witness my hand and seal this ——— day of ———, A. D. 188–.

Witness: ——— ———.

———.

FORM 13.

Proof of Publication.

——— *of* ———, *County of* ———, *ss.*

Reprint Copy of } ———, being first duly sworn, deposes and says, that he is
Notice of Application. } the ——— of the ———, a newspaper published at ———, in ——— county, in the ——— of ———; that the notice of the application for a patent for the ——— mining claim, of which a copy is hereto attached, was first published in said newspaper, in its issue dated the ——— of ———, 188–, and was published in each [daily or weekly] issue of said newspaper for [sixty consecutive days, or nine consecutive weeks,] thereafter, the full period of sixty days, the last publication thereof being in the issue dated the ——— of ———, 188–.

——— ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 188–.

[SEAL.] ——— ———, *Notary Public.*

FORM 14.

Affidavit of Five Hundred Dollars Improvement.

——— *of* ———, *County of* ———, *ss.*

——— and ———, of lawful age, being first duly sworn according to law, depose and say that they are acquainted with the ——— mining claim in ——— mining district, county and ——— aforesaid, for which ——— has made application for patent under the provisions of Chapter Six of Title Thirty-two, Revised Statutes of the United States and that the labor done and improvements made thereon by the applicant and his grantors exceed five hundred dollars in value, and said improvements consist of (describe fully).

——— ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 188–.

——— ———.

FORM 15.

Statement of Fees and Charges.

——— *of* ———, *County of* ———, *ss.*

———, being first duly sworn according to law, deposes and says that he is the applicant for patent for the ——— lode in ——— mining district, county of ———, ——— of ———, under the provisions of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, and that in the prosecution of said application he has paid out the following amounts, and no more, viz.: To the credit of the Surveyor-General s office, ——— dollars; for surveying, ——— dollars; for filing in the local land office, ——— dollars; for publication of notice, ——— dollars; and for the land embraced in his claim, ——— dollars.

——— ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 188–.

[SEAL.] ——— ———, *Notary Public.*

FORM 16.

Proof of Ownership and Possession in Case of Loss or Absence of Mining Records.

——— *of* ———, *County of* ———, *ss.*

——— ———, and ——— ———, each for himself, and not one for the other, being first duly sworn according to law, deposes and says that he is a citizen of the United States, over the age of twenty-one years, and a resident of ——— county, ———, and has resided in ——— mining district, wherein the ——— mine is situated, since ——— day of ———, 18—. That since said date he has been acquainted with the ——— mine, and with the possessors and workers thereof. That said mine was located and has been possessed and worked in accordance with the customs and usages of miners in said district, and in conformity with the rules and regulations governing the location, holding and working of mining claims, in force and observed in the (State) of ———. That there are no written records known to deponent existing in said mining district. That affiant is credibly informed and believes that the ——— mine was located in the year 18—, and that if any record was made of said location, and of the names of locators, the same has not been in existence for a long number of years past, and that by reason thereof the names of locators cannot now be ascertained, and no abstract of title from locators to the present owner can be made. That the possession of applicant and his predecessors in interest of said ——— mine has been actual, notorious and continuous, to the positive knowledge of deponent, since his residence in said mining district, and that such possession has been perfected and maintained in conformity with mining usages and customs, and has been acquiesced in and respected

by the miners of said district. That applicant's right to the said ——— mine is not in litigation within the knowledge of affiant, and that no action or actions have been commenced affecting the right to said mine since his acquaintance therewith (and that the time for the commencement thereof, as required to be instituted under the provisions of the Statute of Limitations of the ——— of ———, has long since elapsed). That applicant and his predecessors in interest have expended in the improvement, development and working of said mine a sum of money exceeding ——— dollars, as follows, to wit: ———.

——— ———.
——— ———.
——— ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 188–, and I certify that the aforenamed ——— and ——— are credible and respectable persons, to whose affidavits full faith and credit should be given.

[SEAL.] ——— ———.

NOTE.—This should be sworn to by at least two respectable persons.

FORM 17.

Affidavit of Citizenship.

——— *of* ———, *County of* ———, *ss.*

———, being first duly sworn according to law, deposes and says, that he is the applicant for patent for ——— mining claim, situated in ——— mining district, county of ———; that he is a native-born citizen of the United States, born in ———, county of ———, State of ———, in the year 18—, and is now a resident of ———.

——— ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 188–.

——— ———.

NOTE.—If the applicant is a naturalized citizen, or has declared his intention to become a citizen, he should show in his affidavit where, when and before what court he was naturalized or his declaration was made.

FORM 18.

Certificate that No Suit is Pending.

——— *of* ———, *County of* ———, *ss.*

I, ———, clerk of the court in and for ——— county, ———, do hereby certify that there is now no suit or action of any character pending in said court involving the right of possession to any portion of ——— mining claim, and that there has been no litigation before said court affecting the title to said claim, or any part thereof, for ——— years last past, other than what has been finally decided in favor of ———.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at my office in ———, this ——— day of ———, A. D. 188–.

[SEAL.] ——— ———, Clerk of the ——— Court, ———.

FORM 19.

Power of Attorney to Apply for Patent.

KNOW ALL MEN BY THESE PRESENTS, that we, ——— and ———, do hereby constitute and appoint ——— as our attorney in fact, for us and in our names, to make application to the United States for the entry and purchase of certain Government lands, in ——— mining district, ——— county, ——— of ———, known as the ——— mining claim and premises; and to have the same surveyed, and to take any and all steps that may be necessary to procure from the Government of the United States a patent to

the said lands and premises, granting the same to us. And to do all other acts appertaining to the said survey and entry aforesaid as we ourselves could do by our own act and in our own proper person.

In witness whereof we have hereunto set our hands and affixed our seals the ——— day of ———, A. D. 188–.

——— ———.
——— ———.

——— *of* ———, *County of* ———, *ss.*

On this ——— day of ———, A. D. 188–, before me, ———, a Notary Public in and for the ———, county of ———, personally appeared ———, known to me to be the same person whose name ——— subscribed to the foregoing instrument, and acknowledged to me that ——— executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

[SEAL.] ——— ———, *Notary Public.*

FORM 20.

Proof that no Known Vein Exists in a Placer Mining Claim.

——— *of* ———, *County of* ———, *ss.*

——— and ———, of the said county and ———, being first duly sworn, each for himself, deposes and says, that he is well acquainted with the ——— placer mining claim, embracing ——— ———, situated in the ——— mining district, in the county of ———, and ——— of ———, owned and worked by ———, applicant for United States patent; that for many years he has resided near, and often been upon the said mining premises, and that no known vein or veins of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, exist on said mining claim, or on any part thereof, so far as he knows, and he verily believes that none exist thereon. And further, that he has no interest whatever in the said placer-mine of ———.

———.

Subscribed and sworn to before me this ——— day of ———, A. D. 188–.

———.

NOTE.—In case any known mines exist within the exterior boundaries of the placer-claim, the names of such known veins should be given.

FORM 21.

Protest and Adverse Claim.

United States Land Office, ——— of ———.

In the matter of the application of ———, for a United States patent for the ——— lode or mining claim and the land and premises appertaining to said mine, situated in the ——— mining district, in ——— county, ——— of ———.

To the Register and Receiver of the United States Land Office at ———, *and to the above-named applicants for patent for the* ——— *lode.*

You are hereby notified that ——— of the city of ———, county of ———, and ——— of ———, and a citizen of the United States of America, is the lawful owner, and entitled to the possession of ——— hundred feet of the said ——— lode or mine described in said application, as shown by the diagram posted on said claim, and the copy thereof filed in the land office with said application, and as such owner this contestant, the said ———, does protest against the issuing of a patent thereon to said applicant, and does dispute and contest the right of said applicant therefor.

And this contestant does present the nature of his adverse claim, and does fully set forth the same in the affidavit hereto attached, marked Exhibit A, and the further exhibits thereto attached, and made part of said affidavit.

The said ——— therefore respectfully asks the said Register and Receiver that all further proceedings in the matter be stayed, until a final settlement and adjudication of the rights of this contestant can be had in a court of competent jurisdiction.

(Place and Date.) ——— ———.

EXHIBIT A.

——— *of* ———, *County of* ———, *ss.*

———, being first duly sworn, deposes and says, that he is a citizen of the United States, born in the State of ———, and is now residing in ———; that he is the contestant and protestant named in, and who subscribed the notice and protest hereto annexed. Affiant further says that he is the owner by purchase and in the possession of the (adverse) lode or vein of quartz and other rock in place, bearing ——— and other metals. That the said lode is situated in the ——— mining district, ——— county, ——— of ———.

[*The history of the lode should be given in full; for instance, as follows:*]

This affiant further says, that on the day of location the premises hereinafter described were mineral lands of the public domain, and entirely vacant and unoccupied, and were not owned, held, or claimed by any person or persons as mining ground or otherwise, and that while the same were so vacant and unoccupied, and unclaimed, to wit:

On the ——— ——— day of ——— ———, 18—, (name locators,) each and all of them being citizens of the United States, entered upon and explored the premises, discovered and located the said ——— ——— lode, and occupied the same as mining claims. That the said premises so located and appropriated consist of ——— ——— feet in a ———erly direction, and ——— ——— ——— feet in a ———erly direction, as will fully appear by reference to the notice of location, a duly certified copy whereof is hereunto annexed, marked Exhibit B, and hereby made a part of this affidavit. That the locators, after the discovery of the said ——— lode, drove a stake on said lode on the discovery claim, erected a monument of stone around said stake, and placed thereon a written notice of location describing the claim so located and appropriated, giving the names of the locators and quantity taken by each, and after doing all the acts and performing all the labor required by the laws and regulations of said ——— mining district and territory of ———, the locators of said lode caused said notice to be filed and recorded in the proper books of record in the Recorder's office in said district on the ——— day of ———, 18—.

Affiant further says, that the said locators remained continuously in possession of said lode, working upon the same, and within ——— months from the date of said location had done and performed work and labor on said location in mining thereon and developing the same, more than ——— days work, and expended on said location more than ———hundred dollars, and by said labor and money expended upon the said mining location and claim, had developed the same and extracted therefrom more than ——— tons of ore.

And affiant further says, that said locators, in all respects, complied with every custom, rule, regulation, and requirement of the mining laws, and every rule and custom established and in force in said ——— mining district, and thereby became and were owners (except as against the paramount title of the United States) and the rightful possessors of said mining claims and premises.

And this affiant further says, that said locators proved and established to the satisfaction of the Recorder of said ——— mining district that they had fully complied with all the rules, customs, regulations, and requirements of the laws of said district, and thereupon the said Recorder issued to the locators of said ——— lode, certificates confirming their titles and rights to said premises.

That the said lode was located and worked by the said locators as tenants in common, and they so continued in the rightful and undisputed possession thereof from the time of said location until on or about the ——— day of ———, A. D. 18—, at which time the said locators and owners of said lode formed and organized under the laws of the State (or Territory) of ———, and incorporated under the name of the "———," and on the ——— day of ———, A. D. 18—, each of the locators of said lode conveyed said lode and each of their rights, titles, and interest in and to said lode, to said "——— mining company."

On the said ——— day of ———, 18—, the said company entered into and upon said ——— lode, and was seized and possessed thereof and every part and parcel of the same, and occupied and mined thereon until the ——— day of ———, 18—, at which time the said ——— mining company sold and conveyed the same to this affiant, which said several transfers and conveyances will fully appear, by reference to the abstract of title and paper hereto attached, marked Exhibit D, and made a part of this affidavit.

[*In case of individual transfers.*]

And this affiant further says, that the said ———, who located claim ——— northwesterly of the said ——— lode, and the said ———, who located claim ——— northwesterly thereon, was seized and in possession of said claims, and occupied and mined thereon until the ——— day of ———, 18—, at which time the said ——— and ——— sold and conveyed the same to ———, and thereupon the said ——— was seized and possessed of said mining claims and locations, and occupied and mined thereon until the ——— day of ———, 18—, at which time the said ——— sold and conveyed the same to this affiant, as will fully appear by reference to the abstract of title and paper hereto attached, marked Exhibit D, and which this affiant hereby makes a part of this his affidavit.

Affiant further says, that he is now and has been in the occupation and possession of the said ——— lode since the ——— day of ———, 18—, and that said lode and mining claims were located, and the title thereto established, several ——— before said (applied for) ——— lode was located.

Affiant further says, that said ——— lode, as shown by the notice and diagram posted on said claim, and the copy thereof filed in the United States Land Office at said ——— with said application for a patent, crosses and overlaps said ——— lode, and embraces about ——— hundred feet in length by ——— hundred feet in width of the said ——— lode, the property of this affiant, as fully appears by reference to the diagram or map duly certified by ———, United States Deputy Surveyor, hereto attached, marked Exhibit C, and which diagram presents a correct description of the relative locations of the said (adverse) lode, and of the pretended (applied for) lode.

Affiant further says, that he is informed and believes that said applicant for patent well knew that affiant was the owner in possession and entitled to the possession of so much of said mining ground embraced within the survey and diagram of said applications, as is hereinbefore stated, and that this affiant is entitled to all the ———and other metal in said (adverse) lode, and all that may be contained within a space of ——— feet on each side of said (adverse) lode.

And affiant further says, that this protest is made in entire good faith, and with the sole object of protecting the legal rights and property of this affiant in the said (adverse) lode and mining premises.

——— ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 188–.

——— ———.

SURVEYOR'S CERTIFICATE.

On the diagram marked Exhibit C, the Surveyor must certify in effect, as follows:

I hereby certify that the above diagram correctly represents the conflict claimed to exist between the ——— and ——— lodes, as actually surveyed by me. And I further certify, that the value of the labor and improvements on the (adverse) lode, exceeds five hundred dollars, and said improvements consist of (state in full).

(Place and Date.)

——— ———, *U. S. Deputy Surveyor.*

FORM 22.*

Tunnel Claim—Location Certificate.

Know all men by these presents, that the undersigned, citizens of the United States, have this ——— day of ———, 188–, claimed by right of location, a tunnel claim, for the purpose of discovering and working veins, lodes or deposits on the line thereof [cutting the ——— lode, and working the ——— lode]. Said tunnel claim is situated in the ——— mining district, county of ———, State of ———, and the location and bounds of said tunnel are staked on the surface at the place of commencement and termination thereof, as well as along the line thereof. Said claim is more particularly described as follows: [*Describe the commencement and termination by reference to natural objects and permanent monuments, and the line by courses and distances.*]

Dated ———, 188–.

——— ———,
Locator.

FORM 23.

Power of Attorney to Locate and Sell.

Know all men by these presents, that we, the undersigned [*names*], ———, citizens of the United States, have made, constituted and appointed A. B. [*some third person, who will locate and stake*], our true and lawful attorney for us, and in our names to locate, stake and record for us each lode claims and placer mining ground in the ———, ——— county, ——— of ———, and having located the same, to bargain, sell, grant, release and convey the same, entire or in separate parcels, to make proper deeds, seal, acknowledge and deliver the same to such persons as our attorney may desire; hereby ratifying and confirming all lawful acts done by our said attorney by virtue hereof.

Witness our hands and seals, this ——— day of ———, 18—.

[*Names.*]

——— *of* ———, *County of* ———, *ss.*

On this ——— day of ———, 18—, before me ——— in and for the county and State aforesaid, appeared ——— personally known to me as the persons whose names are subscribed to the foregoing power of attorney, and acknowledged the execution thereof as their free act and deed, for the purposes therein mentioned.

Given under my hand and ——— seal the day and year above written.

——— ———.

FORM 24.

Notice of Right to Water.

The undersigned claims the water running in this ——— stream to the extent of ——— inches for mining purposes, to be conveyed by (ditch or flume) from this point to the ——— placer claim.

Dated ———, 18—.

——— ———,
Locator.

NOTE—This notice is to be posted near the outlet, and the following form is to be duly recorded in the district or county Recorder's office.

* Forms 22, 23, 24, 25, 26, 27, and 28, are from Carpenter's Mining Code, slightly modified.

FORM 25.

Pre-emption of Right of Way for Ditch and Location of Water.

To whom these presents may concern, know ye, that I, ———, of the county of ———, in the State of ———, a citizen of the United States, do hereby declare and publish as a legal notice to all the world, that I claim, and have a valid right to the occupation, possession and enjoyment of all and singular, that tract or parcel of land lying and being in the county of ———, in the State of ———, for the exclusive right of way for the purpose of constructing a flume or water ditch from ——— stream to ——— placer claim, more particularly described as follows: Commencing [*here describe the exact route for ditch or flume.*]

I also claim, and have a valid right to the enjoyment and use of ——— inches of water from said stream for mining purposes, to be conveyed through such flume or water ditch to said claim, together with all and singular, the hereditaments and appurtenances thereunto belonging, or in any wise appertaining.

Witness my hand and seal this ——— day of ———, A. D. 18—.

——— ———.

[*Name.*]

Notice posted on the stream ———, 18—.

Ditch commenced at claim or at stream ———, 18—.

——— *of* ———, *County of* ———, *ss.*

On this ——— day of ———, 18—, before me, a ——— in and for the county aforesaid, in the State aforesaid, personally appeared ———, to me personally known to be the person who executed the foregoing written instrument, and acknowledged that he executed the same for the uses and purposes therein set forth.

Witness my hand and official seal. ——— ———.

FORM 26.

Mining Deed.

THIS INDENTURE, made the ——— day of ———, in the year of our Lord one thousand eight hundred and eighty, between ——— ———, of the county of ———, and ——— of ———, party of the first, and ——— ———, of the county of ———, and ——— of ———, party of the second part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of ——— dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents does grant, bargain, sell, remise, release, and forever quit-claim, unto the said party of the second part, his heirs and assigns, the ——— lode, as located, surveyed, recorded, and held by said party of the first part, situated in ——— mining district, ——— county, ———, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges, and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs

and assigns forever. In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

[SEAL.] ——— ———.

——— *of* ———, ——— *County, ss.*

I, Richard Roe, a Notary Public in and for said county; in the State aforesaid, do hereby certify that ——— ———, personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this ——— day of ———, A. D. 188–.

[SEAL.] RICHARD ROE, *Notary Public.*

FORM 27.

Title Bond to Mining Property.

Know all men by these presents, that I, John W. Newton, party of the first part, of the county of Lake, and State of Colorado, am held and firmly bound unto William H. Hunt, party of the second part, of the county of Lake, and State of Colorado, in the penal sum of ten thousand dollars, lawful money of the United States, to the payment of which the party of the first part hereby binds himself, his heirs, executors, and administrators. Witness his hand and seal this 20th day of July, 1880. The conditions of the foregoing obligations are such, that whereas, the above bounden party of the first part, in consideration of the sum of five dollars, in hand paid, has, on the day and year aforesaid, agreed to sell to the party of the second part the following described mining property, viz: An undivided one-eighth interest in and to the Gilt Edge lode claim, as located, surveyed, recorded, and held, situate, lying and being in California Mining District, Lake county, Colorado, together with all and singular, the improvements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining, for the sum of five thousand dollars, to be paid at the times and in the manner following, viz: One thousand dollars on or before August 20, 1880; one thousand dollars on or before September 20, 1880; and three thousand dollars on or before October 20, 1880; which sums of money are to be paid to the party of the first part, in person, or by depositing the same to his credit at the Vermont National Bank of St. Albans, at the times aforesaid, and time shall be of the essence of these conditions. And in case of failure of the party of the second part, or his assigns, to make either of said payments at the times mentioned, such sum or sums as may have been paid hereunder, shall be forfeited to and retained by the party of the first part, as a penalty and for liquidated damages, and notice of forfeiture is hereby expressly waived, and also all right, demand or claim for the balance or any of said sum of five thousand dollars, is hereby expressly waived by the party of the first part. The party of the first part, his heirs, executors, administrators, and assigns, shall on the 20th day of October, 1880, or at any time before, upon payment of said sums of money hereinbefore mentioned, make, execute, and deliver to the party of the second part, or to such person or persons as he shall designate, good and sufficient deed or deeds of all of the above described property, conveying a clear and perfect title (except the fee simple title of the United States), free from all incumbrances, with a covenant, that the annual expenditure has been made thereon as required by law. Now, if the party of the second part shall fail to pay the sum or sums of money as hereinbefore provided, and if the party of the first part shall faithfully perform the covenants herein set forth, then this obligation shall be null and void; otherwise, to be and remain in full force and effect.

[SEAL.] JOHN W. NEWTON.

State of Colorado, Lake county, ss.

Be it known, That on this 20th day of July, 1880, before me, personally came John

W. Newton, to me known as the person described in, and who executed the foregoing instrument in writing, and acknowledged the execution thereof to be his free act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal.

[SEAL.] ALEX. G. WATSON, *Notary Public.*

FORM 28.

Escrow Agreement.

The inclosed deed of the ——— lode is hereby placed in the ——— Bank of ———, *in escrow.* If A. B. shall place, or cause to be placed to the credit of C. D. and E. F., in said ——— bank of ———, on or before ———, 188–, the full sum of ——— dollars, then and in that case the said bank is hereby authorized to deliver the inclosed deed to A. B., or his order. In case the said A. B. shall not place, or cause to be placed, to the credit of said C. D. and E. F., in said bank, the full sum of ——— dollars, on or before ———, 188–, then the said bank is hereby authorized to deliver the inclosed deed to the said C. D. and E. F., or their joint order.

(Signed) C. D.
E. F.
A. B.

——— ——— ———, 188–, (Place and date).

NOTE.—When the option for the purchase of a mine is desired by a third party, it is the safest and best plan for the mine owner to put a deed *in escrow.* It saves incumbering of the record, and any questions that might arise concerning the payment of money. The deed should be a warranty, quitclaim, or mining deed, as agreed, fully executed and acknowledged, ready for delivery, put in a sealed envelope, and placed in some bank, or left with some responsible person, with an agreement written upon the envelope, as above.

FORM 29.

Mining Lease.*

THIS INDENTURE, made this ——— day of ———, in the year of our Lord one thousand eight hundred and eighty ——, between ——— lessor and ——— lessee or tenant; *Witnesseth,* That the said lessor for and in consideration of the rents, royalties, covenants and agreements hereinafter reserved, and by the said lessee to be paid, kept and performed, ——— granted, demised and let, and by these presents do grant, demise and let unto the said lessee, all the following described mine and mining property, situated in ——— mining district, county of ———, ——— of ———, to wit: (Here description of property.) Together with the appurtenances ——— to have and to hold unto the said lessee or tenant for the term of ——— from the date hereof, expiring at noon on the ——— day of ———, A. D. 188–, unless sooner forfeited or determined through the violation of any covenant hereinafter against the said tenant ——— reserved.

And in consideration of the said demise, the said lessee does covenant and agree with said lessor as follows, to wit:

To enter upon said mine or premises and work the same mine fashion, in manner necessary to good and economical mining, so as to take out the greatest amount of ore possible, with due regard to the safety, development and preservation of the said premises as a workable mine.

(Here insert special covenants for dead work, etc.)

* From Morrison's Mining Rights in Colorado.

NOTE.—The covenants of a mining lease are peculiar, and cannot be too particularly stated in the instrument. If for more than one year, it should be in writing, and recorded.

Instead of a lease a license may be granted. The distinctions between a lease and a license are technical, but important.

A license, usually, is not exclusive, and invests no property in the mineral until severed. Work done for lessees cannot subject the ground to a miner's lien.

To work and mine said premises as aforesaid steadily and continuously from the date of this lease: and that any failure to work said premises with at least ——— persons employed underground for the space of ——— consecutive days may be considered a violation of this covenant.

To well and sufficiently timber said mine at all points where proper, in accordance with good mining; and to repair all old timbering wherever it may become necessary.

To allow said lessor and ——— agents to enter upon and into all parts of said mine for the purpose of inspection, with use of all passages, ropes, windlass, ladder-ways, and all other means of ingress and egress for such purpose.

To not assign this lease, or any interest thereunder, and to not sublet the said premises or any part thereof, without the written assent of said lessor, and to not allow any person or persons except the said lessee and ——— workmen to take or hold possession of said premises or any part thereof under any pretence whatever.

To occupy and hold all cross or parallel lodes, dips, spurs, feeders, crevices or mineral deposits of any kind, which may be discovered in working under this lease, or in any tunnel run to intersect said ——— lode, or by the said lessee or any person or persons under ———, in any manner at any point within ——— feet of the centre line of said lode, as the property of said lessor; with privilege to said lessee of working the same as an appurtenance of said demised premises, during the term of this lease; and to not locate or record the same, or allow the same to be located or recorded, except in the name of said lessor.

To keep at all times the drifts, shafts, tunnels, and other passages and workings of said demised premises, thoroughly drained and clear of loose rock and rubbish of all kinds.

To pay and deliver to said lessor as royalty, ——— of all ore to be extracted from said premises during said term, of like assay to that retained by said lessee, delivered at ——— as soon as mined, without offset, deduction, or charge whatever, except lessor's proportion for packing.

To deliver up to said lessor the said premises, with the appurtenances and all improvements ——— in good order and condition, with all shafts and tunnels and other passages thoroughly clear of rubbish and drained, and the mine in all points ready for immediate continued working (accidents not arising from negligence alone excusing), without demand or further notice, on said ——— day of ———, A. D. 188–, at noon or at any time previous, upon demand for forfeiture.

And finally, upon the violation by said lessee, or any person under ———, of any covenant or covenants hereinbefore reserved, the term of this lease shall, at the option of said lessor, expire, and the same and said premises with the appurtenances shall become forfeit to said lessor: and said lessor or ——— agent may thereupon, after demand of possession in writing, enter upon said premises and dispossess all persons occupying the same, with or without force, and with or without process of law; or at the option of said lessor, the said tenant and all persons found in occupation may be proceeded against as trespassers from the beginning of said term both as to realty and the ore served therefrom; or as guilty of unlawful detainer.

Each and every clause and covenant of this Indenture shall extend to the heirs, executors, and administrators of all parties hereto: and to the assigns of said lessor: and as said lessor may elect, to the assigns of said lessee.

In witness whereof, The said parties, lessor and lessee, have hereunto set their hands and seals.

——— ———. ——— ———. [SEAL.]

——— ———. ——— ———. [SEAL.]

FORM 30.

Incorporation and By-Laws.

Certificate of Incorporation of Chrysolite Silver Mining Company.

State of New York, City and County of New York, ss.:

We, Horace A. W. Tabor, Drake De Kay and Henry C. Gardiner, citizens of the United States, and a majority of whom are citizens of the State of New York, hereby associate together for the purpose of creating a corporation under the laws of the State of New York, authorizing the formation of corporations for mining and other purposes, and in compliance with the provisions of said laws we do hereby state and certify:

First. That the corporate name of this company is and shall be the CHRYSOLITE SILVER MINING COMPANY.

Second. That this company is formed for the sole purpose of mining the ores and minerals contained in the mines known as the Chrysolite, Carboniferous, Little Eva, Vulture, Kit Carson, All Right, Fairview, Pandora, Colorado Chief, Solid Muldoon, Sliver and Eaton, and no others, situated in the California Mining District, Lake County, State of Colorado, and separating the metals from such ores and minerals. The said company shall have power to purchase the said mines, to wit: The said Chrysolite, Carboniferous, Little Eva, Vulture, Kit Carson, All Right, Fairview, Pandora, Colorado Chief, Solid Muldoon, Sliver and Eaton, and to issue full-paid stock in payment therefor.

Third. That the amount of capital stock of this company is and shall be ten million dollars, divided into two hundred thousand shares of the par value of fifty dollars each.

Fourth. That the existence of the company shall continue for the term of fifty years.

Fifth. That the number of trustees who shall manage the concerns and business affairs of said company is and shall be eleven, and John P. Jones, Daniel S. Appleton, Ulysses S. Grant, Junior, Henry A. V. Post, William Borden, Horace A. W. Tabor, William S. Nichols, Leonidas M. Lawson, Edward B. Dorsey, Arthur Sewell, and Charles A. Whittier, are the names of the persons who shall be the trustees of said company for the first year, and all of whom are citizens of the United States, and a majority citizens and residents of the State of New York.

Sixth. That the principal office and place of business of said company shall and is to be located in the City and County of New York, State of New York; but the mining operations and the separation of the metals from the ores are to be carried on out of the State of New York, viz.: In the County of Lake, State of Colorado, and elsewhere in said State.

In witness whereof we have hereto set our hands and seals this twenty-ninth day of September, one thousand eight hundred and seventy-nine.

(Signed,)	H. A. W. TABOR,	[SEAL.]
	DRAKE DE KAY,	[SEAL.]
	HENRY C. GARDINER.	[SEAL.]

State of New York, City and County of New York, ss.:

On this 30th day of September, 1879, before me personally came Horace A. W. Tabor, Drake De Kay and Henry C. Gardiner, to me known, and known to me to be the individuals described in and who executed the foregoing certificate, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

(Signed,) WILLIAM H. CLARKSON,

[SEAL.] *Notary Public for New York County, N. Y.*

State of New York, City and County of New York, ss.:

I, Hubert O. Thompson, Clerk of the said City and County, and Clerk of the Supreme Court of said State for said County, do certify that I have compared the preceding with the original certificate of incorporation of the Chrysolite Silver Mining Company on file in my office, and that the same is a correct transcript therefrom, and of the whole of said original, endorsed, filed 3d October, 1879.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 3d day of October, 1879.

(Signed,) HUBERT O. THOMPSON, *Clerk.*

[SEAL.]

State of New York, Office of the Secretary of State, ss.:

I have compared the preceding with the original Certificate of Incorporation of the Chrysolite Silver Mining Company, with acknowledgement thereto annexed, filed in this office on the 3d day of October, 1879, and do hereby certify the same to be a correct transcript therefrom, and of the whole of said original.

Witness my hand and seal of office of the Secretary of State, at the City of Albany, this third day of October, one thousand eight hundred and seventy-nine.

(Signed,) GEORGE MOSS,

[SEAL.] *Deputy Secretary of State.*

BY-LAWS.

ARTICLE I.

Officers.

SECTION 1. The officers of this company shall consist of a President, Vice President, Treasurer, Secretary, General Manager, and Financial Agent. The President and Vice President must be chosen from the Trustees.

ARTICLE II.

President.

SECTION 1. The President shall be the chief executive agent of the company in the management of its affairs, but subject at all times and in all matters to the control and direction of the Board of Trustees. He shall, when present, preside at all meetings of the Board of Trustees, and perform such other duties as may be required of him by the laws of this State, and by the By-Laws of the company, and by the Board of Trustees. He shall sign all contracts, certificates of stock, drafts, acceptances and checks.

SEC. 2. He shall receive such salary as the Board of Trustees may fix and allow.

SEC. 3. He may be removed at any time by a majority of the Board of Trustees.

ARTICLE III.

Vice President.

SECTION 1. In the absence of the President, the Vice President shall possess all the powers and perform all the duties of the President, and receive such compensation for his services as the Board may fix and allow.

ARTICLE IV.

Treasurer.

SECTION 1. It shall be the duty of the Treasurer to receive all the money and funds of the company, and deposit the same in such banking-house as the Board of Trustees shall from time to time direct; and, under the direction of said Board, he shall pay out the same by check, countersigned by the President and Secretary, and not otherwise.

SEC. 2. He shall keep full and correct books of account, which shall at all times be

open to the inspection of any member of the Board. He shall make a report in detail to said Board at least quarterly, and make such other reports and statements at such times as said Board may require.

He shall give such bonds as the Board shall require.

SEC. 3. He shall be entitled to such compensation for his services as the Board of Trustees may from time to time fix and allow.

ARTICLE V.

Secretary.

SECTION 1. It shall be the duty of the Secretary to keep full and accurate minutes of all proceedings of the Board of Trustees and Executive Committee, and of the Stockholders, in a proper book or books. He shall also keep a list of all persons who are or have been Stockholders within the period of one year, with their names alphabetically arranged.

SEC. 2. He shall perform such other duties as may be required by the laws of the State, the Board of Trustees, and the By-Laws of the company; and he shall receive such salary as the Board of Trustees may fix and allow.

ARTICLE VI.

General Manager.

SECTION 1. The General Manager shall be the general agent of the company in the State of Colorado. He shall have power to enter upon and take possession of all the mines and property of the company in the State of Colorado.

SEC. 2. The General Manager shall be subject at all times and in all matters, acts and transactions, to the direction and control of the President of the company and of the Board of Trustees.

SEC. 3. He shall not have the power to contract any debt or incur any liability on the part of the company exceeding at any time ten thousand dollars in the aggregate, unless previously authorized by the Board of Trustees.

SEC. 4. He shall be subject to suspension at any time at the will of the President, and to removal by the Board of Trustees; and in case of suspension by the President, the President shall forthwith notify the Trustees of such suspension, and call a meeting of the Board.

SEC. 5. The General Manager shall receive such compensation for his services as the Board of Trustees may from time to time fix and allow.

ARTICLE VII.

Trustees.

SECTION 1. Regular meetings of the Board of Trustees shall be held at the office of the company on the fifteenth day of each and every month. When this falls on a legal holiday, on the next succeeding day that is not a legal holiday.

SEC. 2. Special meetings of the Board may be held at any time on notice of two days, by mail or personal service, to each member of said Board, stating the time, place and objects of meeting, to be given by the President or by the Secretary at the request of any two members of the Board, and no business except that so stated can be acted on at such meeting.

SEC. 3. They shall exercise a general supervision over the affairs of the company, receive and pass upon the reports of the Secretary, Treasurer and Superintendent, declare dividends, audit all bills and accounts against the company, and direct the Secretary in correspondence. They shall have power to delegate from time to time such authority as they may deem necessary to the officers or agents of the company, or to any one or

more members acting as a committee. They may appoint a managing director or such other agents as they may deem necessary, define their respective duties, fix their compensation, and remove or suspend them for sufficient cause, except for the removal of the President and amendment of the By-Laws; in this case a majority.

SEC. 4. Five of the Trustees shall constitute a quorum of the Board at any regular or special meeting; but, in the absence of a majority of the Board, the minority shall have power to adjourn such meeting, regular or special.

In case of meetings held for the amendment of the By-Laws or the removal of the President, a majority of the Trustees elected shall be necessary to constitute a quorum.

SEC. 5. Neither the President nor any other officer or agent of this company shall have power to contract any debt or incur any liability exceeding the sum of ten thousand dollars, without the authority of the Board of Trustees or the Executive Committee.

ARTICLE VIII.

Executive Committee.

SECTION 1. There shall be an Executive Committee, consisting of five Trustees, four of whom shall be appointed by resolution of the Board. The President, or in his absence the Vice President, shall act as the fifth member of such committee.

SEC. 2. The Executive Committee shall have full power to manage all the business affairs of the company when the Board is not in session, and the acts and proceedings of the said committee shall have the same force and effect as the acts and proceedings of the Board of Trustees, unless the action of said committee shall be disapproved by resolution adopted by the Board at the next meeting of the Board held after such act or proceeding of said committee has been reported to the Board of Trustees.

SEC. 3. Any officer or employee of the company, excepting the President, may be suspended or removed at will by the Executive Committee.

ARTICLE IX.

Vacancy and Tenure.

SECTION 1. In case of a vacancy occurring from any cause in the Board of Trustees, the same may be filled by appointment made by the Trustees in office.

SEC. 2. The Trustees, and each and every officer of the company, shall hold office until their or his successors shall have been elected or appointed and have qualified; but nothing in this section shall be so construed as to prevent the removal of any officer as hereinbefore provided.

ARTICLE X.

Certificates.

SECTION 1. The capital stock of this company shall be represented by certificates signed by the President and the Secretary.

ARTICLE XI.

Seal.

SECTION 1. The corporate seal shall bear upon its face, within a circle, the corporate name of the company and date of incorporation.

ARTICLE XII.

Closing of Books.

SECTION 1. The stock books of the company shall be closed for five days previous to any election of Trustees or the date of payment of a dividend; and a list of stockholders prepared at that time shall designate who shall vote or receive dividends.

ARTICLE XIII.

Stockholders' Meeting.

SECTION 1. The annual meeting of the Stockholders for the election of Trustees of this company shall be held in the city of New York on the first Tuesday in October, 1880, and yearly thereafter. Twenty days notice shall be given of the time and place of holding such meeting by the Secretary, by public advertisement in one or more daily newspapers published in the city of New York, and by notice sent by mail to each Stockholder at his residence, as it may appear on the books of the company. A majority of the Stockholders present, either in person or by attorney, shall constitute a quorum.

SEC. 2. At such election each Stockholder shall be entitled to cast one vote for each share standing in his name, as shall appear by stock list at the time of closing the books. No person shall vote as proxy unless he shall produce and deliver to the Secretary a written authority so to do, signed by the Stockholder whom he represents.

SEC. 3. The polls shall be open at twelve o'clock noon, and shall remain open until two o'clock in the afternoon of the same day, and on the closing thereof the inspectors shall proceed to count the vote and declare the result.

ARTICLE XIV.

Amendments.

SECTION 1. These By-Laws may be altered, amended or repealed by the Board of Trustees, at any regular or special meeting; but in every or any such alteration, amendment or repeal at least a majority of the members of the Board of Trustees must concur.

FORM 31.

Stock Certificate.

100 SHARES.

Shares $50 each. Countersigned and registered ——, 188–. *Registrar of Transfers.*

Location of mine. } FRYER HILL. LEADVILLE, COLORADO.

CHRYSOLITE SILVER (*Picture*) MINING COMPANY.

Number 5195. 100 *Shares.*

This certifies that —— —— is entitled to One Hundred Shares of the Full-paid Capital Stock of the Chrysolite Silver Mining Company, transferable only on the books of the Company, in person or by attorney, on surrender of this Certificate. This Certificate is not valid without the signature of the Registrar of Transfers.

Capital $10,000,000.

New York, —— ——, *President.*

——, 188–. —— ——, *Secretary.*

200,000 Shares.

100.

Organized under the Laws of the State of New York.

Transfer on Back.

For value received — have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto —— —— the Capital Stock named in the within Certificate, and — do hereby constitute and appoint —— —— true and lawful attorney, irrevocable for ——, and in —— name and stead, but to —— use, to sell, assign, transfer and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power. Dated ——, 188–.

—— ——.

Signed and acknowledged in presence of

—— ——.

FORM 32.

Sketch of Minutes of a First Meeting.

The Trustees of the ——— met at ———.

The Certificate of Incorporation read.

Election of President, Vice President and Secretary.

Adoption of By-Laws.

Resolution offering the Capital Stock for subscription.

Resolution to purchase certain mining property for a certain amount of full-paid stock, or to accept the property in lieu of money in payment of the subscription to the stock, made by the owners of the property, and authorizing the issue of stock certificates.

Appointment of other officers.

Adoption of a seal, or authorization of the procurement of a suitable seal by the proper officers of the company.

Adoption of a form of stock certificate, or authorization of the preparation of a suitable form by the proper officers of the company.

b. GLOSSARY OF MINING TERMS.*

BY R. W. RAYMOND, PH. D.

Adit. A nearly horizontal passage from the surface, by which a mine is entered and unwatered. In the United States an adit is usually called a *tunnel*, though the latter, strictly speaking, passes entirely through a hill, and is open at both ends.

Adlings, ENG. Earnings.

Adobe, SP. Clay suitable for *adobes* or sun-dried bricks.

Adventurers, ENG. Shareholders or partners in a mining enterprise; in Cornwall, *cost-book* partners.

After-damp, ENG. The irrespirable gas, consisting of nitrogen and carbonic acid chiefly, remaining after an explosion of *fire-damp*.

Agitator, PAC. See *Settler*.

Air-head or Air-heading, S. STAFF. A smaller passage, driven parallel with the *gate-road*, and near its roof, to carry the ventilating current. It is connected with the *gate-road* at intervals by openings called *spouts*.

Aitch-piece. See *H-piece*.

Alligator. A rock-breaker operating by jaws.

Alloy. A compound of two or more metals fused together.

Alluvium. The earthy deposit made by running streams, especially in times of flood.

Aluminium Ores. *Cryolite*, a fluoride of sodium and aluminium, found in Greenland; *bauxite*, a hydrous compound of alumina, ferric oxide, and silica.

Amalgamation. 1. The production of an amalgam or alloy of mercury. 2. The process in which gold and silver are extracted from pulverized ores by producing an amalgam, from which the mercury is afterwards expelled. See *Retorting*.

Amalgamator. 1. A machine for amalgamating ores. 2. The workmen in charge of such a machine.

* NOTE.—This glossary is condensed by the omission of many metallurgical terms, from one prepared by Dr. Raymond (No. 17 Burling Slip, New York City,) with the assistance of other members of the American Institute of Mining Engineers, and presented as a paper to that society.

It is prepared in accordance with the following general principles:

1. To include the most important technical words and phrases used by American miners or occurring in English books and periodicals.

2. To exclude Spanish, French and German terms, unless they fall under the rule above given. The Spanish terms included are in use among our miners in the far West and Southwest.

3. To exclude almost all purely scientific terms, such as those which denote the operations of chemical analysis, the chemical names and symbols of elements and compounds, the species of rocks and minerals, the principles of general physics and mechanics, etc.

4. To avoid scientific and technical explanations.

5. To omit, in general, self-explanatory terms, and such as are common to all mechanical and manufacturing trades.

In many instances, the locality in which a term is believed to have originated or to be peculiarly in use, is indicated by abbreviations which will mostly explain themselves. The principal regions named are England, Scotland, Wales, France, Germany, the United States, Spain (including Mexico), Australia, Cornwall, Derbyshire, Staffordshire, Newcastle, Devonshire, Lake Superior, Pennsylvania, and the Pacific Slope (including the mining districts of the Rocky Mountains).

Arm. The inclined member or leg of a set or frame of timber.

Arrastre, SP. Apparatus for grinding and mixing ores by means of a heavy stone dragged around upon a circular bed. The arrastre is chiefly used for ores containing free gold, and amalgamation is combined with the grinding. Sometimes incorrectly written *arraster*, *arrastra*, or *raster*.

Anemonieter. An instrument for measuring the rapidity of an air-current.

Anthracite. See *Coal.*

Anticlinal. The line of a crest, above or under ground, on the two sides of which the strata dip in opposite directions. The converse of *synclinal.*

Antimony ores. Native antimony; *stibnite* (sulphide of antimony); *valentinite* and *senarmontite* (oxides).

Apex. In the U. S. Revised Statutes, the end or edge of a vein nearest the surface.

Apolvillados, SP. Ores superior in quality to the *azogues.*

Aprons. See *Copper-plates.*

Arch, CORN. A portion of a lode left standing when the rest is extracted, to support the *hanging wall* or because it is too poor for profitable extraction.

Arenaceous. Silicious or sandy (of rocks).

Arenillos, SP. Refuse earth.

Argentiferous. Containing silver.

Argillaceous. Containing clay.

Arroba, SP. Twenty-five pounds avoirdupois.

Arsenic ores. Native arsenic; *mispickel* (*arsenopyrite*, *arsenical pyrites*, arseno-sulphide of iron).

Ascension-theory. The theory that the matter filling fissure-veins was introduced in solution from below.

Assay. To test ores and minerals by chemical or blowpipe examination; said to be in *the dry way* when done by means of heat (as in a crucible), and in *the wet or humid way* when by means of solution and precipitation or liquid tests. An assay differs from a complete analysis in being confined to the determination of certain ingredients, the rest not being determined. Both assays and analyses may be either qualitative or quantitative; that is, they may determine the presence merely, or also the amount, of some or all of the constituents of the substance examined. The assay value of gold and silver ores is usually determined in Troy ounces (or, for gold, pennyweights) per ton (2000 pounds avoirdupois) of ore. See *Assay-ton.* When reported in money value, the ounce of gold is taken at $20.6718. A ton of pure gold would be worth $40,928.51; the value of $6 per ton would be by weight one-thousandth per cent., and so on. Silver varies greatly in market value; but assayers often report their results according to the old U. S. standard, which made the ounce of pure silver worth $1.2929. The ton of silver, at this rate, would be worth $37,710.40; the value of $37 per ton would be by weight one-tenth per cent., and so on. For ordinary gold and silver ores, it is evident that the percentages would be inconveniently small as expressions of value. Assays of lead, copper, iron, etc., are reported in percentages.

Assay-ton. A weight of 29.166⅔ grams. Since one ton of 2000 pounds avoirdupois contains 29.166⅔ troy ounces, it is evident that each milligram of gold or silver obtained from one assay-ton of ore represents one ounce troy to the ton of 2000 pounds avoirdupois.

Assessment-work, PAC. The work done annually on a mining claim to maintain possessory title.

Astel. Overhead boarding or arching in a gallery.

Astyllen, ENG. A small dam in an adit or level, to check water.

Atierres, SP. Refuse ores.

Attle, CORN. Refuse rock.

Auger-nose shell. See *Wimble.*

Auger-stem. The bar to which a drilling-bit is attached.

Augèt or *Augètte.* A priming tube, used in blasting.

Auriferous. Containing gold.

Average produce, CORN. The quantity of pure or fine copper in one hundred parts of ore.

Average standard, CORN. The price per ton of pure or fine copper in the ore.

Aviador, SP. A person who *habilitates* a mine; that is, who furnishes the money for working it by a contract with proprietors.

Azogueria, SP. 1. The amalgamating works. 2. The process of amalgamation.

Azogues, SP. Common or inferior ores.

Back, CORN. 1. With reference to an adit drift, or stope, the part of the vein between it and the next working above, or the surface. 2. See *Face*.

Back-casing, ENG. A temporary shaft-lining of bricks laid dry, and supported at intervals upon *curbs*. When the *stone-head* has been reached, the permanent masonry lining is built upon it inside of the *back-casing*.

Back-end, NEWC. The part of a *judd* remaining after the *sump* has been removed.

Backing deals, NEWC. Planks driven vertically behind the curbs in a shaft from one curb to another.

Back-shift. The second set of miners working in any spot each day.

Back-skin, NEWC. A leather covering worn by men in wet workings.

Bait, NEWC. A pitman's provisions.

Bal, CORN. A mine.

Balance-bob. A heavy lever ballasted at one end, and attached at the other to the pump-rod, the weight of which it thus helps to carry. When the shaft is deep, and the pump-rods are consequently very heavy, balance-bobs are put in at intervals of 200 or 300 feet, thus relieving the strain on the rods themselves, and on the engine.

Balk, NEWC. A *hitch* producing a *nip*.

Balland, DERB. Pulverulent lead ore.

Ballast-shovel. A round mouthed shovel.

Ball Stamp, LAKE SUP. A stamp for crushing rock, operated directly by steam-power, the stem of the stamp being at the same time the piston-rod of a steam cylinder.

Band, NEWC. Stone interstratified with coal.

Bank. 1. DERB (or *Benk*). The face of the coal at which miners are working. 2. An ore deposit or coal bed worked by surface excavations or drifts above water level. 3. ENG. The ground at the top of a shaft. Ores are brought "to bank," *i. e.*, "to grass." See *Grass*.

Banksman, NEWC. See *Lander*.

Bar. 1. A drilling or tamping-rod. 2. A vein or dike crossing a lode. 3. A sand or rock ridge crossing the bed of a stream.

Bar-Diggings. PAC. Gold-washing claims located on the bars (shallows) of a stream, and worked when the water is low, or otherwise with the aid of coffer-dams.

Barilla, SP. Native copper disseminated in grains in copper ores.

Barmaster, DERB. A mining official who collects the dues or royalties, presides over the *barmote*, etc. (From Germ. *Bergmeister*.)

Barmote, DERB. A mining court.

Barney. A small car attached to a rope and used to push cars up a slope or inclined plane.

Barranca, SP. A ravine.

Barrel. 1. The water-cylinder of a pump. 2. A piece of small pipe inserted in the end of a cartridge to carry the *squib* to the powder. 3. A vessel used in amalgamation.

Barrel-amalgamation. The amalgamation of silver ores by revolution in wooden barrels with quicksilver, metallic iron, and water.

Barrel-work, LAKE SUP. Native copper occurring in pieces of a size to be sorted out by hand in sufficient purity for smelting without mechanical concentration.

Barrier-pillars. *Pillars* of coal, larger than ordinary, left at intervals to prevent too extensive crushing when the ground comes to be *robbed*.

Barrow, CORN. 1. A heap of *attle* or rubbish; a *dump*. 2. A vehicle in which ore, coal, etc., are wheeled.

Barrowmen, NEWC. See *Putters*.

Barrow-way, NEWC. A *level* through which coal or ore is wheeled.

Base bullion. See *Bullion*.

Base metals. The metals not classed as *noble* or precious. See *Noble metals*.

Basin. 1. A natural depression of strata containing a coal bed or other stratified deposit. 2. The deposit itself.

Bass or *batt*. See *Bind*.

Basset, DERB. An outcrop; the edge of a stratum.

Batch, CORN. The quantity of ore sent to the surface by a *pare* of men.

Batea, SP. A large wooden bowl in which gold-bearing earth or crushed ore is washed in the same way as in a *pan*.

Bath. A mass of molten material in a furnace, or of solution in a tank.

Batt. See *Bind.*

Battery. 1. A set of *stamps* in a stamp-mill comprising the number which fall in one *mortar*, usually five. 2. A bulkhead of timber. 3. The plank closing the bottom of a *coal-chute.*

Battery-amalgamation. Amalgamation by means of mercury placed in the mortar.

Battery-assay. See *Pulp-assay.*

Bauxite. See *Aluminium ores.*

Beans, NEWC. Small coals.

Bean-shot. Copper granulated by pouring into hot water.

Bear. 1. See *Salamander.* 2. See *Loup.*

Bearing. See *Strike.*

Bed. A seam or deposit of mineral, later in origin than the rock below, and older than the rock above; that is to say, a regular member of the series of formations, and not an intrusion.

Bedded-vein. Properly *bed-vein* (*Lagergang* of the Germans); a lode occupying the position of a bed, that is, parallel with the stratification of the inclosing rocks.

Bede. A miner's pickaxe.

Bed rock, PAC. The solid rock underlying alluvial and other surface formations.

Bed-way. An appearance of stratification, or parallel marking, in granite.

Bell and hopper. See *Cup and cone.*

Belly-helve, ENG. A forge hammer, lifted by a cam which acts about midway between the fulcrum and the head.

Bench. 1. One of two or more divisions of a coal seam, separated by slate, etc, or simply separated by the process or cutting the coal, one bench or layer being cut before the adjacent one. 2. To cut the coal in *benches.*

Benching-up, NEWC. Working on the top of coal.

Bend or *Bind*, DERB. Indurated clay.

Beneficiar, SP. To benefit. To work or improve a mine; to reduce its ores; to derive profit or advantage from working it. *Beneficiation*, sometimes used in English, usually means the reduction of ores.

Biche. A tool ending below in a conical cavity, for recovering broken rods from a bore-hole.

Bind, DERB. See *Bend.*

Bing, NORTH ENG. Eight hundred weight of ore.

Bing-ore, DERB. Ore in lumps.

Bing-hole, DERB. A hole or *shoot* through which ore is thrown.

Bing-tale, NORTH ENG. See *Tribute.*

Bismuth ores. Native bismuth; *bismuth ochre* (oxide); *bismuthine* (sulphide); also, bismuthiferous cobalt, silver and copper ores.

Bit. The cutting end of a boring implement.

Bituminous coal. See *Coal.*

Black-band. An earthy carbonate of iron, accompanying coal-beds. Extensively worked as an iron ore in Great Britain, and somewhat in Ohio.

Black-damp, ENG. Carbonic acid gas.

Black-ends, ENG. Refuse coke from cooking-ovens.

Black-jack, CORN. Zinc-blende; sometimes hornblende.

Black-lead. Graphite.

Black-plate. Sheet iron before tinning.

Black-tin, CORN. Tin ore prepared for smelting.

Blanch. Lead ore, mixed with other minerals.

Blanket-sluices. Sluices in which coarse blankets are laid, to catch the fine but heavy particles of gold, amalgam, etc., in the slime passing over them. The blankets are removed and washed from time to time, to obtain the precious metal.

Blast. The operation of *blasting*, or rending rock or earth by means of explosions.

Blasting-stick. A simple form of fuse.

Bleaching-clay, CORN. Kaolin, used with size, to whiten and give weight and substance to cotton goods.

Blende. See *Zinc ores.*

Blind level. 1. A level not yet connected with other workings. 2. A level for drainage, having a shaft at either end, and acting as an inverted siphon.

Blind-shaft. See *Winze.*

Bloat. A hammer swelled at the *eye.*

Block-coal, U. S. See *Coal.*

Block-tin. Cast tin.

Blossom. The oxidized or decomposed outcrop of a vein or coal-bed, more frequently the latter. Also called *smut* and *tailing.* See *Gossan.*

Blower, NEWC. 1. A strong discharge of gas from a fissure. 2. A *fan* or other apparatus for forcing air into a furnace or mine.

Blow-george. A hand-fan.

Blow out. 1. A large outcrop, beneath which the vein is smaller, is called a *blow-out.* 2. A *shot* or blast is said to *blow out* when it goes off like a gun and does not shatter the rock.

Blowpipe. A tube through which air is forced into a flame, to direct it and increase its intensity. In the compound blowpipe, two jets of gas (one of which may be air) are united at the point of combustion.

Blue-billy, ENG. The residuum of cupreous pyrites after roasting with salt.

Blue-john, DERB. Fluorspar.

Blue lead. (Pronounced like the verb *to lead.*) The bluish auriferous gravel and cement deposit found in the ancient river-channels of California.

Blue peach, CORN. A slate-blue very fine-grained schorl-rock.

Blue stone. Copper-vitriol; copper-sulphate.

Boards. The first set of excavations in *post-and-stall* work.

Boat level, WALES. A navigable *adit.*

Bob, CORN. A triangular frame, by means of which the horizontal motion imparted from an engine is transformed into a vertical motion of the pump-rods in a shaft.

Bob-station. See *Station.*

Bog-iron ore. A loose, earthy *brown hematite*, of recent origin, formed in swampy ground.

Bonanza, SP. Literally, fair weather. In miners' phrase, good luck, or a body of rich ore. A mine is *in bonanza* when it is profitably producing ore.

Bone. The slaty matter intercalated in coal-seams.

Bonnet. A covering over a cage to shield it from objects falling down the shaft.

Bonney, CORN. An isolated body of ore.

Booming. The accumulation and sudden discharge of a quantity of water (in placer mining, where water is scarce). See, also, *Hushing.*

Bord, NEWC. A passage or *breast*, driven up the slope of the coal from the gangway, and hence across the *grain* of the coal.

Bord. See *Boards*, *Breast*, and *Post-and-stall.*

Board-and-pillar. See *Post-and-stall.*

Borer. See *Drill.*

Borrasca, SP. The converse of *bonanza.* Barren rock.

Bort. Opaque black diamond.

Bottom-lift. The deepest lift of a mining-pump, or the lowest pump.

Bottomer, ENG. The man stationed at the bottom of a shaft in charge of the proper loading of cages, signals for hoisting, etc.

Bottoms, CORN. The deepest workings.

Boulder or *Bowlder.* A fragment of rock brought by natural means from a distance (though this notion of transportation from a distance is not always, in later usage, involved) and usually large and rounded in shape. *Cobble-stones* taken from river-beds are, in some American localities, called boulders.

Bounds, CORN. A tract of tin-ore ground.

Bout, DERB. A measure of lead-ore; twenty-four *dishes.*

Bowke, S. STAFF. A small wooden box in which iron-ore is hauled underground.

Bowse or *Bouze*, DERB. Lead-ore as cut from the lode.

Box-bill. A tool used in deep boring for slipping over and recovering broken rods.

Box-timbering. See *Plank timbering.*

Brace, CORN. The mouth of a shaft.

Brace-head. A cross-attachment at the top of the column of rods in deep boring, by means of which the rods and bit are turned after each drop.

Brace-key. See *Brace-head.*

Braize, U. S. Charcoal-dust. See *Breeze.*

Brake-sieve. A *jigger*, operated by a hand-lever.

Brakesman. The man in charge of a winding-engine.

Brances. See *Brasses.*

Branch. CORN. A small vein departing from the main lode, and in some cases returning.

Brasses, ENG. and WALES. Pyrites (sulphide of iron) in coal.

Brat, ENG. and WALES. A thin bed of coal mixed with pyrites or carbonate of lime.

Brattice, ENG., SCOT., and WALES. A plank lining, or a longitudinal partition of wood, brick, or even cloth, in a shaft, level, or gangway, generally to aid ventilation.

Brazil. Iron pyrites.

Breaker. See *Coal-breaker* and *Rock-breaker.*

Breast. 1. The *face* of a working. 2. In coal mines, the chamber driven upwards from the *gangway*, on the seam, between pillars of coal left standing, for the extraction of coal.

Breast-boards. Planking placed between the last set of timbers and the *face* of a *gangway* or *heading* which is in quicksand or loose ground.

Breccia. A *conglomerate* in which the fragments are angular.

Breeding-fire. See *Gob-fire.*

Breeze, ENG. Small coke. Probably connected, perhaps interchangeable, with *Braize*, and both with the FR. *Braise.*

Brettis, DERB. A *crib* of timber filled up with *slack* or waste.

Brettis-way. A road in a coal-mine, supported by *brettises* built on each side after the coal has been worked out.

Bridle-chains. Safety-chains to support a *cage* if the link between the cage and rope should break.

Broaching-bit. A tool used to restore the dimensions of a bore-hole which has been contracted by the swelling of the marl or clay walls.

Brob. A peculiar spike, driven alongside the end of an abutting timber to prevent its slipping.

Broil or *Broyl*, CORN. See *Bryle.*

Broken coal, PENN. See *Coal.*

Brood, CORN. The heavier kinds of waste in tin and copper ores.

Brown coal. See *Coal.*

Browse. Ore imperfectly smelted, mixed with cinder and clay.

Bryle, CORN. The traces of a vein, in loose matter, on or near the surface.

Bucker, DERB. A flat piece of iron with a wooden handle, used for breaking ore.

Bucket. The piston of a lifting-pump.

Bucking, DERB. See *Cobbing.* The *bucking-hammer* or *bucking-iron* is a broad-headed hammer used for this purpose; and the ore is broken on a flat piece of iron (bucking-plate).

Buckwheat-coal, PENN. See *Coal.*

Buddle, CORN. An inclined vat or stationary or revolving platform upon which ore is concentrated by means of running water. Strictly the *buddle* is a shallow vat, not a platform or *table;* at least not in some localities. But general usage, particularly on the Pacific slope, makes no distinction.

Buggy. A small mine-wagon holding ½ ton to 1 ton of coal.

Buhrstone. A quartz rock containing cellules.

Bulkhead. 1. A tight partition or stopping in a mine for protection against water, fire, or gas. 2. The end of a flume, whence water is carried in iron pipes to hydraulic workings.

Bull. See *Clay-iron.*

Bullfrog. See *Barney.*

Bullion. Uncoined gold and silver. *Base bullion* (PAC.), is pig lead containing silver and some gold, which are separated by refining.

Bull-pump, CORN. A direct single-acting pump, the steam cylinder of which is placed over the top of a shaft or slope, and the piston-rod attached to the pump-rods. The steam lifts piston and pump-rods, and the weight of these makes the down-stroke.

Bull-wheel. In rope-boring, a wheel on which is wound the rope for hoisting the bit, etc.

Bully. A pattern of miners' hammer, varying from "*broad-bully*" to "*narrow-bully.*"

Bunch of ore, CORN. An ore-body, usually a small one.

Bunding. A staging of boards on *stulls* or *stemples*, to carry *deads.* See *stull-covering.*

Buntons, ENG. Battens or scantlings placed horizontally across a shaft, to which are nailed the boards forming the *cleading* or *sheathing* of a *brattice.*

Burden, CORN. The tops or heads of stream-work, which lie over the stream of tin

Burr. Solid rock.

Burrow, CORN. A heap of refuse.

Buscones, SP. Searchers; explorers.

Bushel. The Imperial bushel, of 2218 cubic inches, and the Winchester bushel, of 2150 cubic inches, are divided into 4 pecks. The bushel used in measuring charcoal and coal contains 5 pecks, or 2580 cubic inches, being 20 pounds or less of charcoal, and, in various localities, 80, 76, or 72 pounds of coal.

Butt, ENG. Of coal; a surface exposed at right angles to the *face*. See *End*.

Butty, DERB. and STAFF. A miner by contract at so much per ton of coal or ore.

Cable-tools. The apparatus used in drilling deep holes, such as artesian wells, with a rope, instead of rods, to connect the drill with the machine on the surface.

Cache, FR. The place where provisions, ammunition, etc., are *cached* or hidden by trappers or prospectors in unsettled regions.

Cage. 1. A frame with one or more platforms for cars, used in hoisting in a vertical shaft. It is steadied by guides on the sides of the shaft. 2. A structure of elastic iron rods slipped into the bore-hole in *rod-boring* to prevent vibration of the rods. 3. The barrel or drum in a *whim* on which the rope is wound.

Caking coal. See *Coal*.

Cala, SP. A small pit or experimental hole.

Cal, CORN. Wolfram.

Calicata, SP. A digging or trial pit.

Cañada, SP. A ravine, or small cañon.

Canch. A part of a bed of stone worked by quarrying.

Cand or *Cann*, CORN. Fluorspar.

Cank, DERB. See *Whinstone*.

Cañon, SP. A valley, usually precipitous; a gorge.

Cannel coal See *Coal*.

Cap or *Cap-rock*. Barren vein matter, or a *pinch* in a vein, supposed to overlie ore.

Capel. A composite stone of quartz, schorl, and hornblende.

Captain. CORN and WALES. The official in immediate charge of the work in a mine.

Carat. 1. A unit employed in weighing diamonds, and equal to 3⅙ troy grains. A *carat-grain* is one-fourth of a carat. 2. A term employed to distinguish the fineness of a gold alloy, and meaning one twenty-fourth. Fine gold is 24-*carat* gold. Goldsmiths' standard is 22 *carats* fine, *i. e.*, contains 22 parts gold, 1 copper, and 1 silver.

Carbona, CORN. An irregular deposit or impregnation of tin ore, found in connection with a tin lode.

Carbonaceous. Containing carbon not oxidized.

Carbonates. The common term in the West for ores containing a considerable proportion of carbonate of lead. They are sometimes earthy or ochreous (soft carbonates), sometimes granular and comparatively free from iron (sand carbonates), and sometimes compact (hard carbonates). Often they are rich in silver.

Carga, SP. A mule-lode of 300 pounds avoirdupois.

Case. A small fissure, admitting water into the workings.

Casing, CORN. 1. A partition or *brattice*, made of *casing-plank*, in a shaft. 2. PAC. *Casings* are zones of material altered by vein-action, and lying between the unaltered country rock and the vein.

Cast after-cast, CORN. The throwing up of ore from one platform to another successively. See *Shambles*.

Cata, SP. A mine denounced, but unworked.

Cat-head. 1. A small capstan. 2. A *broad bully* hammer. See *Bully*.

Cauf, NEWC. See *Corf*.

Caunter lode, CORN. A vein coursing at a considerable angle to neighboring veins.

Caving. The falling in of the sides or top of excavations.

Cawk. Sulphate of baryta (heavy spar).

Cazo, SP. A caldron in which amalgamation is effected by the *cazo* process, used in Mexico and South America.

Cement, AUSTR. and PAC. Gravel firmly held in a silicious matrix, or the matrix itself.

Cerro, SP. A hill or mountain.

Chacing. Following a vein by its range or direction.

Chaldron. Thirty-six bushels. In Newcastle fifty-three hundred weight avoirdupois. *Chaldron-wagons*, containing this quantity, convey the coal from the pit to the place of shipment.

Chalybeate. Impregnated with iron (applied to mineral waters).

Chamber. See *Breast.*

Champion lode. The main vein as distinguished from branches.

Changing-house, CORN. A room where miners change and dry their underground clothing. See *Dry.*

Charbon roux, FR. Brown charcoal, produced by an incomplete carbonization of wood.

Charge. The amount of explosive used for one blast.

Charger, CORN. An auger-like implement for charging horizontal bore-holes for blasting.

Charring. The expulsion by heat of the volatile constituents of wood, etc., leaving more or less pure vegetable carbon.

Chartermaster, S. STAFF. See *Butty.*

Chats, NORTHUMB. Small pieces of stone with ore.

Cheeks. 1. The sides or walls of a vein. 2. Extensions of the sides of the *eye* of a hammer or *pick.*

Chert. Hornstone; a silicious stone often found in limestone.

Cherry coal, ENG. See *Coal.*

Chestnut coal, PENN. See *Coal.*

Chilian mill. An improved *arrastre*, in which a heavy stone wheel is rolled around the bed.

Chimming, CORN. See *Tossing.*

Chimney. An ore-shoot. See *Chute.*

China clay. Kaoline.

Chisel. See *Bit.*

Chock. See *Nog.*

Choke damp, ENG. Carbonic acid gas.

Chlorides, PAC. A common term for ores containing chloride of silver.

Chrome ore. Chromic iron (*chromite*, oxide of chromium, and oxide of iron).

Chute. (Sometimes written *shoot.*) 1. A channel or shaft underground, or an inclined trough above ground, through which ore falls or is "shot" by gravity from a higher to a lower level. 2. A body of ore, usually of elongated form, extending downward within a vein (*ore-shoot*). The two forms of orthography of this word are of French and English origin respectively. Under *chute*, the original idea is that of falling; under *shoot*, that of shooting or branching. Both are appropriate to the technical significations of the word. An *ore-shoot*, for instance, may be considered as a branch of the general mass of the ore in a deposit, or as a pitch or fall of ore (GERM. *erzfall*). In England the orthography *shoot* is, I believe, exclusively employed, and this is perhaps the best, the other being unnecessarily foreign.

Cinnabar. Sulphuret of mercury.

Cistern, CORN. See *Tank.*

Clack, CORN. A pump-valve.

Clack-door, CORN. An opening into the valve-chamber of a pump.

Claggy, NEWC. Adhesive. When the coal is tightly joined to the roof, the mine is said to have a *claggy top.*

Claim, PAC. The portion of mining ground held under the Federal and local laws by one claimant or association, by virtue of one location and record.

Clanny lamp. The safety-lamp invented by Dr. Clanny.

Clay-iron. A tool for crowding clay into leaky bore-holes.

Cleading, ENG. See *Buntons.*

Clean-up. The operation of collecting all the valuable product for a given period or operation in a stamp mill, or in a hydraulic or placer mine.

Cleat. 1. A joint in coal or rock. 2. A strip of wood.

Cleavage. The property in a mineral, of splitting more easily and perfectly in some directions than in others. The planes of cleavage bear a relation to the crystal form of the mineral. The *cleavage* of rock-masses is more properly a jointing, unless it follows the planes of bedding.

Clinker. The product of the fusion of the earthy impurities (ash) of coal during its combustion.

Clinometer. A simple apparatus for measuring by means of a pendulum or spirit-level and circular scale, vertical angles, particularly *dips.*

Clod. Soft shale or slate, in coal mines, usually applied to a layer forming a bad roof.

Clotting. The sintering or semi-fusion of ores during roasting.

Coal (ENG. *Coals*). This term is now applied to *stone-coal* or *pit-coal*, that is, mineral coal, obtained by mining, as distinguished from charcoal. No scientific account of the nature and origin of coal will be given here. The three principal classes recognized by common usage are *anthracite* (hard, black, composed, when pure, almost exclusively of carbon), *bituminous* or *coking coal* (brown or black, containing hydrocarbons), and *lignite* or *brown coal* (brown or black, generally showing a woody or a laminar structure, containing much water, and more recent, geologically speaking, than the other varieties). *Semi-anthracites* and *semi-bituminous coals* are gradations between *anthracite* and *bituminous*, based on the increasing percentage of volatile matters. *Hydrogenous* or *gas-coals* are bituminous coals yielding the highest percentage of volatile matters. The English classification of *bituminous coals* distinguishes *coking coal* proper (splintering when heated, but subsequently fusing into a semi-pasty mass), *cherry* or *soft coal* (igniting readily and burning rapidly without splintering or fusion), *splint, rough* or *hard coal* (igniting with more difficulty but burning with a clear, hot fire), and *cannel coal* (the *parrot coal* of Scotland, compact, homogeneous, conchoidal in fracture, burning with clear, bright flame). The English call *anthracite* also *stonecoal* or *culm*, and speak of a *semi-anthracite* as *steam-coal.* Any coal advantageously used for generating steam is called a *steam-coal* in the United States. The solid carbon remaining after the expulsion of volatile matters from *bituminous coal* or *lignite* is called *coke.* Commercial *coke*, however, must have a certain coherence and strength; and the coals which furnish it in this condition are called *coking coals.* A peculiar bituminous coal of Indiana and Ohio, which breaks in blocks, and is used raw without coking, to some extent, as a blast-furnace fuel, is called *block-coal. Anthracite* is divided in the United States according to the color of the ash after burning, into *white-ash, red-ash*, and *pink-ash coal.* It is also classified for the market according to the size of the pieces (see *Coal-breaker*), as follows: *Lump* includes the largest lumps as they come from the mine. The other sizes pass over and through sieve-meshes of the size named, the figures signifying inches, and thus indicating roughly the average limit of diameter for the pieces in each size, viz.:

Steamboat,	through 7	over 4;
No. 1, *Broken* or *grate,*	through 4	over 2¾ to 2½;
No. 2, *Egg,*	through 2¾ to 2½	over 2¼ to 2;
No. 3, *Large stove,*	through 2¼ to 2	over 1⅞ to 1½;
No. 4, *Small stove,*	through 1⅞ to 1½	over 1⅛ to 1;
No. 5, *Chestnut,*	through 1⅛ to 1	over ⅝ to ½;
No. 6, *Pea,*	through ⅝ to ½	over ⅜ to ¼.

No. 7, *Buckwheat*, is rarely made, except when the coal is washed on the screens, and the *chestnut* and *pea* have the larger dimensions above given. It is the smallest size, and usually included in the dirt or *culm.*

Coal-breaker. A building containing the machinery for breaking coal with toothed rolls, sizing it with sieves, and cleaning it for market.

Coal pipes, NEWC. Very thin irregular layers of coal.

Cobalt-ores. Cobalt-speiss (*smaltine, chloanthite* when niccoliferous, *safflorite* when ferriferous, or arsenide of cobalt with or without nickel or iron); *cobalt glance* and *cobalt pyrites* (*smaltite* and *linnæite*, sulphides of cobalt); *cobalt bloom* (*erythrite*, arseniate of cobalt).

Cobbing, CORN. Breaking ore to sort out its better portions. See *Spall.*

Cobre ores. Copper ores from Cuba.

Cockle, CORN. See *Schorl.*

Cod, NEWC. The bearing of an axle.

Coffer or *Cofer*, DERB. 1. To secure a shaft from leaking by ramming in clay behind the masonry or timbering. 2. (or *Cover*) CORN. See *Mortar* (2). 3. A rectangular plank frame, used in timbering *levels.*

Coffin, CORN. 1. An old open working. 2. The mode of open working by casting up ore and waste from one platform to another, and so to the surface.

Cogs. See *Nogs;* only *cogs* are not squared, but simply notched where they cross each other. The interior of a structure of this kind and the spaces between the timbers are usually filled with *gob.* They are called also *cobs, corncobs*, etc.

Coil-drag. A tool to pick up pebbles, bits of iron, etc., from the bottom of a drill-hole.

Collar. 1. See *Cap.* 2. The *collar* of a shaft is the horizontal timbering around the mouth.

Colliery. A coal mine.

Collom washer, LAKE SUP. A variety of *jig.*

Color, SP. 1. Color. The shade or tint of the earth or rock which indicates ore. 2. A particle of metallic gold found in the prospector's pan after a sample of earth or crushed rock has been "panned out." Prospectors say, *e. g.*, "The dirt gave me so many colors to the panful."

Colorados, SP. Ores impregnated with oxide of iron, and in a state of decomposition. See *Gossan.*

Col-rake. A shovel used to stir lead-ores during washing.

Comb. The place in a fissure which has been filled by successive depositions of mineral on the walls, where the two sets of layers thus deposited approach most nearly or meet, closing the fissures and exhibiting either a drusy central cavity, or an interlocking of crystals.

Compass. An instrument like the ordinary nautical or surveyor's compass, though sometimes otherwise marked, and having a *clinometer* attached. Also, a *dip-compass*, for tracing magnetic iron ore, having a needle hung to move in a vertical plane.

Concentration. The removal by mechanical means of the lighter and less valuable portions of ore.

Concentrator. An apparatus in which, by the aid of water or air and specific gravity, mechanical concentration of ores is performed.

Conglomerate. A rock consisting of fragments of other rocks (usually rounded) cemented together.

Consume. The chemical and mechanical loss of mercury in amalgamation.

Contact. The plane between two adjacent bodies of dissimilar rock. A *contact-vein* is a vein, and a *contact-bed* is a bed, lying, the former more or less closely, the latter absolutely, along a contact.

Cope, DERB. To contract to mine lead-ore by the *dish*, load, or other measure.

Coper, DERB. One who contracts to raise lead-ore at a fixed rate.

Copperas. Ferrous sulphate.

Copper-ores. Native copper; red copper-ore (*cuprite*, protoxide); green and blue *malachite* (*malachite* and *azurite*, carbonates); *copper glance* (*chalcocite*, sulphide); *purple copper* (variegated or *peacock* ore, *bornite*, sulphide of copper and iron); *gray copper* (*fahl-ore*, *tetrahedrite*, sulphantimonide of copper and other metals); *yellow copper* (*copper-pyrites*, *chalcopyrite*, sulphide of copper and iron); *copper-lead ore* (*bournonite*, sulphantimonide of lead and copper); *black copper-ore* (an earthy and variable mixture of sulphide and oxide of copper).

Copper-plates, AUSTR. and PAC. The plates of amalgamated copper over which the auriferous ore is allowed to flow from the stamp-battery, and upon which the gold is caught as amalgam.

Corbond. An irregular mass or "dropper" from a lode.

Core, CORN. A miner's underground working-time or *shift.*

Corf, *Corve*, or *Cauf* (the last incorrect). 1. NEWC. A large basket used in hoisting coal; from the GERM. *Korb.* 2. A wooden frame to carry coal. 3. A sled or low wagon for the same purpose.

Cornish pump. A pump operated by rods attached to the beam of a single-acting, condensing beam-engine. The steam, pressing down the piston in the vertical steam-cylinder, lifts the pump-rods, and these subsequently descend by their own weight.

Coro-coro. A dressed product of copper-works in South America, consisting of grains of native copper mixed with pyrite, chalco-pyrite, mispickel, and earthy minerals.

Cost-book, CORN. A book used to keep accounts of mining enterprises carried on under the *cost-book system*, peculiar to Cornwall and Devon, and differing from both partnership and incorporation. It resembles the mining partnership system of the Pacific States.

Costeaning or *Costeening*, CORN. Discovering veins by pits and open cuts, run on the surface transversely to the supposed course of the veins.

Counter. 1. A cross vein. 2. (Or *counter-gangway.*) A gangway driven obliquely upwards on a coal-seam from the main gangway until it cuts off the faces of the workings, and then continues parallel with the main gangway. The oblique portion is called the *run.*

Country, or *Country rock*, CORN. The rock traversed by or adjacent to an ore deposit.

Course. See *Strike.*

Course of ore. See *Chute* (2).

Coursing. Conducting the air-current of a mine in different directions by means of doors and stoppings.

Cousin Jack. A common nickname for a Cornishman.

Covered binding, CORN. See *Plank-timbering.*

Cow. A kind of self-acting brake for inclined planes; a trailer.

Cowl. See *Water barrel.*

Coyoting, PAC. Mining in irregular openings or burrows, comparable to the holes of *coyotes* or prairie foxes.

Crab. A machine for moving heavy weights. Specially the engines employed for lowering into place the pumps, rods, pipes, etc., of Cornish *pit-work.*

Cradle, PAC. See *Rocker.*

Cramp. A pillar of rock or mineral left for support.

Cranch. Part of a vein left by old workers.

Craze or *Crease*, CORN. The tin-ore which collects in the middle part of the *buddle.*

Creep, NEWC. A rising of the floor of a gangway, occasioned by the weight of incumbent strata, in pillar workings. Also any slow movement of mining ground.

Cretaceous. 1. Chalky. 2. See *Geological formations.*

Crevice, PAC. 1. A shallow fissure in the bed-rock under a gold placer, in which small but highly concentrated deposits of gold are found. 2. The fissure containing a vein.

Crib. 1. See *Curb.* 2. A structure composed of frames of timber laid horizontally upon one another, or of timbers built up as in the walls of a log cabin. 3. A miner's luncheon.

Cribbing. Close timbering, as the lining of a shaft, or the construction of *cribs* of timber or timber and earth or rock, to support a roof.

Cribble. A sieve.

Crop. 1. CORN. See *Crop tin.* 2. The *basset* or *outcrop* of strata at the surface. 3. To leave coal at the bottom of a bed.

Cropping out. The rising of layers of rock to the surface. That part of a vein which appears above the surface is called the *cropping* or *outcrop.*

Crop-tin. The chief portion of tin-ore separated from waste in the principal dressing operation.

Cross course, CORN. An intersecting (usually a barren) vein.

Cross cut. A level driven across the course of a vein, or, in general, across the direction of the main workings (as to connect two parallel gangways), or across the "grain of coal."

Cross-heading. A heading driven across from one gangway or breast to another, usually for ventilation.

Cross-vein. An intersecting vein.

Crow or *crow-foot.* A tool with a side-claw, for grasping and recovering broken rods in deep-bore holes.

Crush. 1. A *squeeze*, accompanied, perhaps, with more violent motion and effects. 2. A variety of fault in coal. See *Fault* (2).

Crusher. A machine for crushing ores.

Cry of tin. The peculiar crackling noise produced in bending a piece of metallic tin.

Culm. 1. ENG. Anthracite. 2, PENN. The waste or *slack* of the Pennsylvania anthracite mines, consisting of fine coal, more or less pure, and coal-dust and dirt.

Curb. A timber frame, circular or square, wedged in a shaft to make a foundation for walling or tubbing, or to support, with or without other timbering, the walls of the shaft.

Curbing. See *Cribbing.*

Cut. 1. To intersect a vein or working. 2. To excavate coal.

Dam. 1. To keep back water in a stream or mine by means of a dam or bulkhead. 2. S. STAFF. See *Stopping* and *Bulkhead.*

Damp sheet, S. STAFF. A large sheet, placed as a curtain or partition across a gate-road, to stop and turn an air-current.

Dan, NEWC. A truck or sled used in coal mines.

Dant, NEWC. Soft, inferior coal; *mineral charcoal.*

Davy lamp. The safety lamp invented by Sir H. Davy.

Day, WALES. The surface of the ground over a mine. *Day-level.* An *adit.* *Day-water.* Water from the surface.

Dead, CORN. 1. Unventilated. 2. As to a vein or piece of ground, unproductive.

Deadened mercury. See *Floured.*

Dead riches. See *Base bullion.*

Dead roasting. Roasting carried to the farthest practicable degree in the expulsion of sulphur.

Deads, CORN. The waste rock, packed in excavations from which ore or coal has been extracted.

Dead-work. Work that is not directly productive, though it may be necessary for exploration and future production.

Deal. Plank used in shaft and gallery construction.

Dean, CORN. The end of a level.

Débris, FR. The fragments resulting from shattering or disintegration.

Deep, CORN. The lower portion of a vein; used in the phrase *to the deep, i. e.*, downward upon the vein.

Denunciar, SP. To denounce. To give information that a mine is forfeited for being insufficiently worked, or for a violation of some condition which imposes that penalty. This term is also applied to the giving notice of a discovery, for the purpose of registry.

Deposit. The term *mineral deposit* or *ore-deposit* is arbitrarily used to designate a natural occurrence of a useful mineral or ore in extent and degree of concentration to invite exploitation.

Derrick. 1. See *Whip.* 2. The hoisting-tower over an artesian well-boring.

Descension-theory. The theory that the material in veins entered from above.

Desuing, CORN. See *Dissuing.*

Desulphurization. The removal of sulphur from sulphuret ores.

Dial, CORN. See *Compass.* To *dial* a mine is to make a survey of it.

Diamond-drill. A form of rock drill in which the work is done by abrasion instead of percussion, black diamonds (*borts*) being set in the head of the boring tool.

Die. A piece of hard iron, placed in a mortar to receive the blow of a stamp, or in a pan to receive the friction of the muller. Between the die and the stamp or muller the ore is crushed.

Dig, CORN. See *Gouge.*

Diggings. Applicable to all mineral deposits and mining camps, but in usage in the United States applied to placer-mining only.

Dike. A vein of igneous rock.

Dilluing or *dilleughing*, CORN. An operation performed in tin-dressing upon the slimes of a certain part of the process. It is like the operation of *panning*, only performed with a sieve having a close haircloth bottom, and in a *kieve* of water which receives the tailings of the process.

Diluvium. Sand, gravel, clay, etc., in superficial deposits. See *Drift.* According to some authors, alluvium is the effect of the ordinary, and diluvium of the extraordinary action of water. The latter term is now passing out of use as not precise, and more specific names for the different kinds of material are substituted.

Dip. The inclination of a vein or stratum below the horizontal. The dip at any point is necessarily at right angles with the local *strike*, and its inclination is steeper than that of any other line drawn in the plane of the vein or stratum through that point.

Dipping-needle. See *Compass.*

Discovery, PAC. The first finding of the mineral deposit in place upon a mining claim. A *discovery* is necessary before the location can be held by a valid title. The openingin which it is made is called *discovery-shaft*, *discovery-tunnel*, etc.

Dish, CORN. 1. The landowner's or lord's part of the ore. 2. DERB. A measure of 14, 15, or 16 pints.

Dissuing, CORN. Cutting out the *selvage* or *gouge* of a lode, to facilitate the ore-extraction.

District. In the States and Territories west of the Missouri, a vaguely-bounded and temporary division and organization made by the inhabitants of a mining region. A district has one code of mining laws, and one recorder. Counties and county officers are gradually taking the place of these cruder arrangements.

Ditch. An artificial water-course flume, or canal, to convey water for mining. A flume is usually of wood; a ditch, of earth.

Divining-rod or *Dowsing-rod*, CORN. A rod (most frequently of witch-hazel, and forked in shape) used, according to an old but still extant superstition, for discovering mineral veins and springs of water, and even for locating oil wells.

Doggy, S. STAFF. An underground superintendent, employed by the *butty*.

Dog-hole. A small *proving-hole* or airway, usually less than five feet high.

Dole. A division of a parcel of ore.

Dolly-tub, CORN. A tub in which ore is washed, being agitated by a *dolly*, or perforated board.

Dope. See *Explosives*.

Dotts or *Dott holes*. Small openings in the vein.

Downcast. The opening through which the ventilating air-current descends into a mine.

Dradge, CORN. The inferior portions of ore, separated from the *prill* by cobbing.

Drag. The lower part of a *flask*. The mould having been prepared in the two parts of the flask, the *cope* is put upon the *drag* before casting. After casting, the flask is opened by removing the *cope*.

Drag twist. A spiral hook at the end of a rod, for cleaning bore-holes.

Draught, S. STAFF. The quantity of coal raised *to bank* in a given time.

Draw. To *rob* pillars or the top coal of breasts before abandoning the ground.

Dredge. Very fine mineral matter held in suspension in water.

Dresser, S. STAFF. A large pick, with which the largest lumps of coal are prepared for loading into the *skip*.

Dressing, CORN. The picking and sorting of ores, and washing, preparatory to reduction.

Drift. 1. A horizontal passage underground. A *drift* follows the vein, as distinguished from a *cross-cut*, which intersects it, or a *level* or *gallery*, which may do either. 2. Unstratified *diluvium*.

Drill. A metallic tool for boring in hard material. The ordinary miner's drill is a bar of steel, with a chisel-shaped end, and is struck with a hammer. See *Rock-drill*, *Diamond drill*.

Driving. Extending excavations horizontally. Distinguished from *sinking* and *raising*.

Dropper, CORN. A branch leaving the main vein on the *footwall* side.

Drowned level. See *Blind level* (2).

Druggon, S. STAFF. A square iron or wooden box, used for conveying fresh water for horses, etc., in a mine.

Drum. That part of the winding machinery on which the rope or chain is coiled.

Druse. A crystallized crust lining the sides of a cavity.

Dry, CORN. See *Changing-house*.

Dualin. See *Explosives*.

Dumb-drift. An *air-way* conveying air around, not through, a ventilating furnace to the *upcast*.

Dump. 1. To unload a vehicle by tilting or otherwise, without handling or shoveling out its contents. 2. A pile of ore or rock.

Dumper. A tilting-car used on *dumps*.

Dun, CORN. A frame of timbering, like a door-frame.

Dutch metal. An alloy of copper and zinc, containing more copper than ordinary brass.

Duty. A measure of the effectiveness of a steam-engine, usually expressed in the number of foot-pounds (or kilogrammetres) of useful work obtained from a given quantity of fuel.

Duty ore, CORN. The landlord's share of the ore.

Dyke. See *Dike*.

Dzhu, CORN. To cut ahead on one side of a *face*, so as to increase the efficacy of blasting on the remainder. (Doubtless the same word as *Dissue*. See *Dissuing*.) Also called *to hulk*.

Egg-coal, PENN. See *Coal*.

Egg-hole, DERB. A notch cut in the wall of a lode to hold the end of a *stempel*.

Elvan, CORN. A name given to certain broad granite veins or belts in schistose rocks.

Emery. Impure corundum.

End of coal. The direction or section at right-angles to the *face*; sometimes called the *butt*.

End pieces, CORN. See *Wall-plates*.

Entry. An *adit*. Applied to the main *gangway* in some coal mines.

Exploder. A cap or fulminating cartridge, placed in a charge of gunpowder or other explosive, and exploded by electricity or by a fuse. See *Explosives*.

Exploitation, FR. The productive working of a mine, as distinguished from exploration.

Explosives. The principal explosives used in mining are *gunpowder*, a compound of sulphur, charcoal, and potassium nitrate (potash saltpeter) or sodium nitrate (Chili or soda-saltpeter); *nitro-glycerin*, a liquid compound of carbon, hydrogen, nitrogen, and oxygen, produced by the action of nitric acid upon glycerin; *dynamite No.* 1, or *giant powder*, a mixture of nitro-glycerin with a dry pulverized mineral or vegetable absorbent or *dope* (commonly silicious or infusorial earth); *dynamite No.* 2, nitro-glycerin mixed with saltpeter, sawdust, or coaldust, paraffin, etc., in lieu of an inexplosive *dope; litho-fracteur*, nitro-glycerin mixed with silicious earth, charcoal, sodium, and sometimes barium nitrate and sulphur; *dualin*, nitro-glycerin mixed with potassium nitrate and fine sawdust; *rend-rock*, *Hercules*, *Neptune*, *tonite*, *vigorite*, and other powders, resembling dynamite No. 2, *i. e.*, consisting of nitro-glycerin with a more or less explosive *dope;* and *mica-powder*, a No. 1 *dynamite*, in which the *dope* is fine scales of mica. The *chlorate*, *picrate*, and *fulminate* explosives are not used in mining, except the fulminate of mercury, which is employed for the *caps* or *exploders*, by means of which charges of powder, dynamite, etc., are fired.

Eye. 1. The top of a shaft. 2. The hole in a *pick* or hammer-head which receives the handle.

Face. 1. In any adit, tunnel, or slope, the end at which work is progressing or was last done. 2. The *face of coal* is the principal cleavage-plane at right angles to the stratification. Driving *on the face* is driving against or at right angles with the face.

Fagot. See *Pile*.

Fahlband, GERM. A zone or stratum in crystalline rock, impregnated with metallic sulphides. Intersecting fissure-veins are enriched by the *fahlband*.

Famp, NEWC. Soft, tough, thin shale beds.

Fan. A revolving machine, to blow air into a mine (*pressure-fan*, *blower*), or to draw it out (*suction-fan*).

Fanega, SP. A bushel; sometimes half a mule-load.

Fang, DERB. An air-course cut in the side of a shaft or level, or constructed of wood.

Fast-end. 1. The part of the coal-bed next the rock. 2. A gangway with rock on both sides. See *Loose-end*.

Fast shot, NEWC. A charge of powder exploding without the desired effect.

Fathom, CORN. Six feet. A *fathom of mining ground* is six feet square by the whole thickness of the vein, or in Cornish phrase, *a fathom forward by a fathom vertical*.

Fathom-tale, CORN. See *Tut-work* (2). This name probably arises from the payment for such work by the space excavated, and not by the ore produced.

Fault. 1. A dislocation of the strata or the vein. 2. In coal-seams, sometimes applied to the coal rendered worthless by its condition in the seam (*slate-fault*, *dirt-fault*, etc.).

Feather. See *Plug and feather*.

Feathering. See *Plugging*.

Feeder. 1. A small vein joining a larger vein. 2. A spring or stream. 3. A *blower* of gas.

Feigh, NEWC. Refuse washed from lead-ore or coal.

Fell. See *Riddle*.

Felspathic. Containing felspar as a principal ingredient.

Ferruginous. Containing iron.

Fettle, *Fettling*. See *Fix*.

Fire-clay. A clay comparatively free from iron and alkalies, not easily fusible, and hence used for fire bricks. It is often found beneath coal-beds.

Fire-damp. Light carburetted hydrogen gas. When present in common air to the extent of one-fifteenth to one-thirteenth by volume, the mixture is explosive.

Fire-setting. The softening or cracking of the working-face of a lode, to facilitate excavation, by exposing it to the action of a wood-fire built close against it. Now nearly obsolete, but much used in hard rock before the introduction of explosives.

Fire stink, S. STAFF. The stench from decomposing iron pyrites, caused by the formation of sulphuretted hydrogen.

Fissure-vein. A fissure in the earth's crust filled with mineral.

Flang, CORN. A two-pointed miner's pick.

Flange. Applied to a vein widening.

Flap-door, NEWC. A manhole door.

Flask. An iron bottle in which quicksilver is sent to market. It contains 76½ pounds.

Flat, DERB. and N. WALES. A horizontal vein or ore-deposit auxiliary to a main vein; also any horizontal portion of a vein elsewhere not horizontal.

Flat-nose shell. A cylindrical tool with valve at bottom, for boring through soft clay.

Flat-rods. A series of horizontal or inclined connecting-rods, running upon rollers, or supported at their joints by rocking-arms, to convey motion from a steam-engine or water-wheel to pump-rods at a distance.

Flat-wall, CORN. A local term (in St. Just) for *foot-wall.*

Float-copper, LAKE SUP. Fine scales of metallic copper (especially produced by abrasion in stamping) which do not readily settle in water.

Float-gold, PAC. Fine particles of gold, which do not readily settle in water, and hence are liable to be lost in the ordinary stamp-mill process.

Float-ore. Water-worn particles of ore; fragments of vein-material found on the surface, away from the vein-outcrop.

Flookan or *Flooking*, CORN. See *Fluccan.*

Floor. 1. The rock underlying a stratified or nearly horizontal deposit, corresponding to the *foot-wall* of more steeply-dipping deposits. 2. A horizontal, flat ore-body. 3. A floor, in the ordinary sense, or a plank platform underground.

Floran-tin, CORN. Tin ore scarcely visible in the stone, or stamped very small.

Flosh, CORN. A rude mortar, with a shutter instead of a screen, used under stamps.

Floured. The finely granulated condition of quicksilver, produced to a greater or less extent by its agitation during the amalgamation process.

Fluccan, CORN. Soft clayey matter in the vein; a vein or course of clay.

Flume. A wooden conduit, bringing water to a mill or mine.

Foal, NEWC. A young boy employed in *putting* coal.

Fodder, NORTH ENG. A unit employed in expressing weights of metallic lead, and equal to 21 hundredweight of 112 pounds avoirdupois.

Foot-piece. See *Sill.*

Foot-wall, CORN. The wall under the vein.

Foot-way. The series of ladders and *sollars* by which men enter or leave a mine.

Forefield, NEWC. The face of the workings. The *forefield-end* is the end of the workings farthest advanced.

Forfeiture. The loss of possessory title to a mine or public lands by failure to comply with the laws prescribing the quantity of *assessment* work, or by actual abandonment.

Fore-poling. A method of securing drifts in progress through quicksand by driving ahead poles, lath, boards, slabs, etc., to prevent the inflow of the quicksand on the sides and top, the face being protected by *breast-boards.*

Fore-winning, NEWC. Advanced workings.

Formation. See *Geological formations.*

Fork. 1. CORN. The bottom of the *sump.* 2. DERB. A piece of wood supporting the side of an excavation in soft ground.

Forpale or *Forepale.* The driving of timbers or planks horizontally ahead at the working-face, to prevent the caving of the ground in subsequent driving.

Fossil ore. Fossiliferous red hematite.

Fother, NEWC. One-third of a chaldron.

Foundershaft. The first shaft sunk.

Frame, CORN. See *Tin-frame.*

Free. Native, uncombined with other substances, as free gold or silver.

Free fall. An arrangement by which, in deep boring, the *bit* is allowed to fall freely to the bottom at each drop or down-stroke.

Free-milling. Applied to ores which contain free gold or silver, and can be reduced by crushing and amalgamation, without roasting or other chemical treatment.

Frue vanner. A variety of continuously working *percussion-table.*

Furnace. 1. A structure in which heat is produced by the combustion of fuel. 2. A structure in which, with the aid of heat so produced, the operations of roasting, reduction, fusion, steam-generation, desiccation, etc., are carried on, or, as in some mines, the *upcast* air-current is heated, to facilitate its ascent and thus aid ventilation.

Furtherance, NEWC. An extra price paid to *hewers* when they also *put* the coal.

Fuse. A tube or casing filled with combustible material, by means of which a blast is ignited and exploded.

Gad. 1. A steel wedge. 2. A small iron punch with a wooden handle used to break up ore.

Gale, ENG. (Forest of Dean.) A grant of mining ground.

Galiage. Royalty.

Gallery. A level or drift.

Gallows-frame. A frame over a shaft, carrying the pulleys for the hoisting cables.

Gang. 1. A mine. 2. A set of miners.

Gangue. The mineral associated with the ore in a vein.

Gangway. 1. A main level, applied chiefly to coal mines. 2, NEWC. A wooden bridge.

Garland, S. STAFF. A trough or gutter round the inside of a shaft to catch the water running down the sides.

Gas-coal. See *Coal*.

Gash. Applied to a vein wide above, narrow below, and terminating in depth within the formation it traverses.

Gas-well. A deep boring, from which natural gas is discharged.

Gate, *Gate-way*, or *Gate-road*, ENG. 1. A road or way underground for air, water, or general passage; a *gangway*. 2. The aperture in a founder's mould, through which the molten iron enters.

Gear, NEWC. 1. The working tools of a miner. 2. The mechanical arrangements connecting a motor with its work.

Geode. A cavity, studded around with crystals or mineral matter, or a rounded stone containing such a cavity.

Geological formations. Groups of rocks of similar character and age are called formations. The different stratified formations have been arranged by geologists according to their apparent age or order of position stratigraphically, and the fossils they contain. While there are minor points of difference in classification, and still more in nomenclature, the general scheme is now well settled. Three tables are given below, the first prepared in 1878, by Professor J. D. Dana, the second by Professor T. Sterry Hunt, both for the United States, and the third, referring to formations found in Pennsylvania only, by Professor J. P. Lesley. [The latter is omitted.—EDITOR]. They are taken (Professor Hunt's, with later revision by the author), from *The Geologist's Traveling Handbook*, prepared by James Macfarlane, Ph.D. The numbers attached to the different formations in these tables will facilitate the identification of a given formation under different names. A catalogue of the formations is added to the tables, in which the predominant rocks of each are named. The eruptive rocks are not included in these tables, the determination of their age being a more difficult and doubtful matter, the discussion of which cannot be undertaken in this place. For lack of space, also, the enumeration and description of the different species of rocks and minerals must be omitted, the reader being referred for such information to works on lithology and mineralogy.

PROFESSOR J. D. DANA'S TABLE OF GEOLOGICAL FORMATIONS.

SYSTEMS OR AGES.		GROUPS OR PERIODS.	FORMATIONS OR EPOCHS.
Age of man.		20. Quaternary.	20. Quaternary.
Age of mammals.		19. Tertiary.	19 c. Pliocene. 19 b. Miocene. 19 a. Eocene.
Reptilian age.		18. Cretaceous.	18 c. Upper Cretaceous. 18 b. Middle Cretaceous. 18 a. Lower Cretaceous.
		17. Jurassic.	17. Jurassic.
		16. Triassic.	16. Triassic.
Carboniferous.		15. Permian.	15. Permian.
		14. Carboniferous.	14 c. Upper Coal Measures. 14 b. Lower Coal Measures. 14 a. Millstone Grit.
		13. Subcarboniferous.	13 b. Upper Subcarboniferous. 13 a. Lower Subcarboniferous.
Devonian, or age of fishes.		12. Catskill.	12. Catskill.
		11. Chemung.	11 b. Chemung. 11 a. Portage.
		10. Hamilton.	10 c. Genesee. 10 b. Hamilton. 10 a. Marcellus.
		9. Corniferous.	9 c. Corniferous. 9 b. Schoharie. 9 a. Cauda Galli.
SILURIAN OR AGE OF INVERTEBRATES.	Upper Silurian.	8. Oriskany.	8. Oriskany.
		7. Lower Helderberg.	7. Lower Helderberg.
		6. Salina.	6. Salina.
		5. Niagara.	5 c. Niagara. 5 b. Clinton. 5 a. Medina.
	Lower Silurian.	4. Trenton.	4 c. Cincinnati. 4 b. Utica. 4 a. Trenton.
		3. Canadian.	3 c. Chazy. 3 b. Quebec. 3 a. Calciferous.
		2. Primordial or Cambrian.	2 b. Potsdam. 2 a. Acadian.
		1. Archæan.	1 b. Huronian. 1 a. Laurentian.

PROFESSOR T. STERRY HUNT'S TABLE OF GEOLOGICAL FORMATIONS.

AGES.	GROUPS.	AMERICAN FORMATIONS.
Cenozoic.	20. Quaternary.	20. Recent.
	19. Tertiary.	19 c. Pliocene. 19 b. Miocene. 19 a. Eocene.
Mesozoic.	18. Cretaceous. 17. Jurassic. 16. Triassic.	18. Cretaceous. 17. New Red Sandstone. 16. New Red Sandstone.
Paleozoic.	13–15. Carboniferous.	15. Permo-Carboniferous. 14. Coal Measures. 13 b. Mississippi (Carb. Limestone). 13 a. Waverley or Bonaventure.
	8–12. Erian or Devonian.	12 Catskill. 11. Chemung and Portage. 10. Hamilton (including Genesee and Marcellus). 9. Corniferous or Upper Helderberg. 8. Oriskany.
	5–7. Silurian.	7. Lower Helderberg. 6. Onondaga or Salina. 5 c. Niagara (including Guelph). 5 b. Clinton. 5 a. Medina. 5 a. Oneida.
	4. Upper Cambrian, Siluro-Cambrian, Ordovician, or Ordovian.	4 c. Loraine. 4 b. Utica. 4 a. Trenton.
	3. Middle Cambrian.	3 c. Chazy. 3 b. Levis (Tremadoc and Arenig). 3 a. Calciferous.
	2. Lower Cambrian.	2 e. Potsdam. 2 d. Sillery. 2 c. Acadian (Menevian). 2 b. Taconian. 2 a. Keweenian.
Eozoic.	1. Primary or Crystalline.	1 e. Montalban. 1 d. Norian or Labrador.* 1 c. Huronian. 1 b. Arvonian. 1 a. Laurentian.

* Professor Hunt says there are many reasons for believing that the Norian may be older than the Arvonian and Huronian.

NOTES.—In the following notes Professor Hunt's classification is sufficiently followed to show the nature of the older groups which he distinguishes:

1 a. *Laurentian.* Chiefly massive gneiss, reddish or grayish, sparingly micaceous, often hornblendic. Some crystalline limestone, magnetic iron, and other metallic ores.

1 b. *Arvonian.* Chiefly petrosilex, often becoming quartziferous prophyry, with some quartzites and hornblendic rocks; magnetic and specular iron ores.

1 c. *Norian.* Chiefly a feldspathic rock (norite), which sometimes carries garnet, epidote, etc.; also, great beds of titaniferous iron ores.

1 d. *Huronian.* Chloritic schists, greenstone (diorite or diabase), serpentine, steatite, dolomite, copper, chrome, nickel, and iron ore.

1 e. *Montalban.* Fine-grained micaceous or hornblendic gneiss, chrysolite rock, serpentine, mica-schist, granite.

2 a. *Keweenian.* The copper-bearing series of Lake Superior, made up of sandstones and conglomerates, with much interstratified eruptive rock.

2 b. *Taconian.* Granular quartzites, argillites and nacreous or hydro-micaceous schists, and great masses of crystalline limestone, marbles, magnetite, siderite, and pyrite changing to limonite.

2 c and 2 d. *Acadian* (and *Sillery*). Fossiliferous sandstone and shale.
2 e. *Potsdam*. Sandstone, conglomerate.
3 a. *Calciferous*. Sandy magnesian limestone, calcareous sandstone.
3 b. *Quebec*. Sandstone, limestone conglomerate, black slate.
3 c. *Chazy*. Limestone, chert.
4 a. *Trenton*. Limestone, buff and blue; dolomite carrying lead-ore deposits; brown-hematite beds.
4 b. *Utica*. Dark carbonaceous slate; impure limestone.
4 c. *Hudson River*. Slate, shale, clay, grit.
5 a. *Medina*. Conglomerate; argillaceous sandstone.
5 b. *Clinton*. Sandstone, shale, conglomerate, limestone, fossiliferous red hematite, or oolitic iron-ore bed.
5 c. *Niagara*. Clay shale; limestone.
6. *Salina*. Red shale, gypseous shale, hydraulic lime, salt.
7. *Lower Helderberg*. Limestone, shaly or compact, and fossiliferous.
8. *Oriskany*. Sandstone.
9. *Corniferous or Upper Helderberg*. Principally limestone.
9 a. *Cauda-galli*. Fine-grained calcareous and argillaceous, drab or brownish sandstone; peculiar fossils.
9 b. *Schoharie Grit*. Fine-grained calcareous grit, similar to 9 a, but with differing fossils.
9 c. *Onondaga*, and 9 d. *Corniferous*. Gray, blue, black limestone. At the top of 9 d occur the Marcellus iron ores (carbonate).
10 a. *Marcellus*. Black or dark-brown bituminous and pyritiferous shales. In 10 a and 9 d occur the petroleum deposits of Canada.
10 b. *Hamilton*. Slate, shale, sandstone, calcareous, and argillaceous.
10 b. *Tully*. Impure dark limestone.
10 c. *Genesee*. Black clay slate.
11 a. *Portage*. Green and black sandy and slaty shales, sandstone, flagstone.
11 b. *Chemung*. Thin-bedded greenish sandstones and flagstones, with intervening shales, and rarely beds of impure limestone.
12. *Catskill*. Red, gray sandstone, grindstone grit, greenish shale, conglomerate.
13 a. *Lower Subcarboniferous*. Sandstone, limestone, small local coal beds.
13 b. *Upper Subcarboniferous*. Red shale, red and gray sandstone, blue limestone.
14 a. *Millstone Grit*. White or yellow sandstone, and conglomerate of quartz pebbles.
14 b and 14 c. *Coal Measures*. Fire-clay, shale, sandstone, conglomerate, limestone, bituminous coal, anthracite, iron ore, salt.
15. *Permian*. Limestone, sandstone, marl, shale.
16. *Triassic*. Red sandstone, red shale, conglomerate, lignite, trap dikes, copper ore, coal.
17. *Jurassic*. Marl, limestone, probably the gold-bearing slates of California.
18. *Cretaceous*. Earthy beds of sand, marl, clay, limestone, chalk, lignite.
19. *Tertiary*. Earthy sand, clay, marl, limestone, sandstone.
20. *Quaternary*. Sand, pebbles, boulders, clay, diluvium, alluvium; gravel and placer tin and gold deposits.

NOTE.—The primary and crystalline schistose rocks contain the larger number of mineral veins. The ancient magnesian limestones (probably Devonian) are characterized in many localities by deposits of argentiferous lead ore and of zinc ore.

Geordie. The miners' term for Stephenson's safety-lamp.

Gig. See *Kibble*.

Gin. See *Whim*.

Ginging, DERB. The lining of a shaft with masonry.

Giraffe. A car of peculiar construction to run on an incline.

Girdle. A thin bed of stone.

Girdle, NEWC. A thin stratum of stone.

Girth. In *square-set* timbering, a horizontal brace in the direction of the *drift*.

Glist, CORN. Mica.

Glut, NEWC. A piece of wood, used to fill up behind *cribbing* or *tubbing*.

Goaf, ENG. An excavated space; also, the waste rock packed in old workings.

Goaves. Old workings.

Gob, S. WALES. See *Goaf*. Both terms are chiefly used in collieries, and are apparently the same word. Local usage seems to give to *goaf* rather the meaning of the space in which the roof has fallen after the *pillars* have been removed, and to *gob* that of a space packed with waste after *long-wall* extraction of the coal.

Gobbing. Packing with waste rock. See *Stowing*.

Gob-fire. Fire produced by the heat of decomposing *gob*.

Goffan or *Goffen*, CORN. A long, narrow surface-working.

Gold-ores. Native gold; *telluric gold ore* (*sylvanite*, *müllerite*, *nagyagite*, tellurides of gold, silver, and lead,); auriferous lead, zinc, and copper ores.

Good levels, CORN. Levels nearly horizontal.

Gopher or *Gopher-drift*. An irregular prospecting-drift, following or seeking the ore without regard to maintenance of a regular grade or section.

Gossan or *Gozzan*, CORN. Hydrated oxide of iron, usually found at the decomposed outcrop of a mineral vein.

Gouge. A layer of soft material along the wall of a vein, favoring the miner, by enabling him after "gouging" it out with a pick, to attack the solid vein from the side.

Grain, ENG. Of coal, the lines of structure or parting parallel with the main gangways, and hence crossing the *breasts*.

Grain-tin, CORN. 1. Crystalline tin ore. 2. Metallic tin.

Gramsas, SP. Small pieces of ore.

Graphite. A crystalline form of carbon.

Grapnel. An implement for removing the core left by an annular drill in a bore-hole, or for recovering tools, fragments, etc., fallen into the hole.

Grass, CORN. The surface over a mine. *Bringing ores to grass* is taking them out of the mine.

Grassero, SP. A slag-heap.

Grate, CORN. See *Screen* (as applied to stamps).

Grate coal, PENN. See *Coal*.

Gravel-mine, U. S. An accumulation of auriferous gravel.

Gray ore, CORN. Copper-glance. See *Copper-ores*.

Griddle, CORN. A miner's sieve to separate ore from *halvans*.

Grip. A small, narrow cavity.

Grizzly, PAC. A grating to catch and throw out large stones from sluices.

Groove or *Grove*, DERB. A mine. From the GERM. *Grube*.

Ground, CORN. The rock in which a vein is found; also, any given portion of the mineral deposit itself.

Growan, CORN. Decomposed granite; sometimes the granite rock.

Grueso, SP. Lump ore. The term is in use at the quicksilver mines of California.

Gubbin. A kind of ironstone.

Guides. 1. The timbers at the side of a shaft to steady and guide the cage. 2. The holes in a cross-beam through which the stems of the stamps in a stamp-mill rise and fall.

Guillotine. A machine for breaking iron with a falling weight.

Gullet. An opening in the strata.

Gunnies or *Gunniss*, CORN. The vacant space left where the lode has been removed.

Hacienda, SP. Exchequer; treasury; public revenue; capital; funds; wealth; landed estate; establishment. In mining it is usually applied to the offices, principal buildings, and works for reducing the ores.

Hack. 1. See *Pick*. 2. A sharp blade on a long handle used for cutting billets in two.

Hade, DERB. See *Underlay*.

Half-marrow, NEWC. Young boys, of whom two do the work of one *putter*.

Halvans, CORN. Ores much mixed with impurities.

Hammer-pick. See *Pull-pick*.

Hanging-coal. A portion of the coal-seam which, by the removal of another portion, has had its natural support removed, as in *holing*.

Hanging-guide. See *Guide*.

Hanging-side, or *Hanging-wall*, or *Hanger*, CORN. The wall or side over the vein.

Hazel. Freestone.

Head-gear. That part of deep-boring apparatus which remains at the surface.

Head-house. See *Gallows-frame*.

Heading. 1. The vein above a drift. See *Back*. 2. An interior level or air-way driven in a mine. 3. In *long-wall* workings, a narrow passage driven upward from a gangway in starting a working, in order to give a *loose end*.

Headings. In ore-dressing, the heavier portions collecting at the upper end of a buddle or sluice, as opposed to the *tailings*, which escape at the other end, and the *middlings*, which receive further treatment.

Head-piece. See *Cap*.

Headsman, NEWC. See *Putter*.

Head-stocks. See *Gallows-frame*.

Head-tree, NEWC. See *Cap*.

Headway, NEWC. See *Cross-heading*. The *headways* are the second set of excavations in *post-and-stall* work.

Heap, NEWC. The refuse at the pit's mouth.

Heave, CORN. A horizontal dislocation of a vein or stratum.

Hercules powder. See *Explosives*.

Hewer, NEWC. The man who *cuts* the coal.

High explosive. An explosive or detonating compound developing more intense and instantaneous force than gunpowder. Most high explosives in general use contain nitro-glycerin. See *Explosives.*

Hitch, SCOT. and NEWC. 1. A minor dislocation of a vein or stratum not exceeding in extent the thickness of the vein or stratum. 2. A hole cut in the side-rock, when this is solid enought, to hold the *cap* of a set of timbers, permitting the *leg* to be dispensed with.

Hog-back. 1. A sharp anticlinal, decreasing in height at both ends until it runs out. 2. A ridge produced by highly tilted strata.

Hogger-pipe. The upper terminal pipe of the mining pump.

Hogger-pump. The topmost pump in a shaft.

Holing. 1. The working of a lower part of a bed of coal for bringing down the upper mass. 2. The final act of connecting two workings underground.

Hopper. 1. A trap at the foot of a *shoot* for regulating the contents of a wagon. 2. A place of deposit for coal or ore.

Horn. See *Spoon.*

Horse, CORN. A mass of country-rock inclosed in an ore-deposit.

Horse-back, NEWC. A portion of the roof or floor which bulges or intrudes into the coal.

Horse-flesh ore, CORN. Bornite. See *Copper-ores.*

Horse-gin. Gearing for hoisting by horse-power.

Hotching, NORTH ENG. See *Jigging.*

House of Water, CORN. A cavity or space filled with water.

H-piece. That part of a *plunger-lift* in which the valves or *clacks* are fixed.

Hudge. An iron bucket for hoisting ore or coal.

Huel, CORN. See *Wheal.*

Hulk. See *Dzhu.*

Hungry. A term applied to hard barren vein-matter, such as white quartz (not discolored with iron oxide).

Hurdy-gurdy wheel. A water-wheel operated by the direct impact of a stream upon its radially-placed paddles.

Hushing. The discovery of veins by the accumulation and sudden discharge of water which washes away the surface soil and lays bare the rock. See *Booming.*

Hutch. 1. SCOT. A low car, suited both to run in a level and to be hoisted on a cage. 2. CORN. A cistern or box for washing ore. See *Jig*, in *Jigging.*

Hydraulicking, PAC. Washing down a hill-claim by the use of pipes, conveying water under high pressure.

Impregnation. An ore-deposit consisting of the country-rock impregnated with ore, usually without definite boundaries.

Inbye or *Inbyeside.* NEWC. Further into a mine, away from the shaft.

Incline. 1. A shaft not vertical; usually on the dip of a vein. See *Slope.* 2. A *plane*, not necessarily under ground.

Indicator. 1. An instrument for showing at any moment the position of the cage in the shaft. 2. An instrument for recording, by a diagram, upon a card, the varying pressure of the steam in the cylinder of a steam-engine during the stroke.

Infiltration-theory. The theory that a vein was filled by the infiltration of mineral solutions.

Injection-theory. The theory that a vein was filled first with molten mineral.

In place. Of rocks, occupying, relative to surrounding masses, the position that it had when formed.

Intake. The passage by which the ventilating current enters a mine. See *Downcast*, which is more appropriate for a shaft; *Intake* for an adit.

Irestone or *Ironstone*, CORN. Greenstone.

Irestone. Hard clay slate; hornstone; hornblende.

Iron-hat. See *Gossan.*

Iron ores: Magnetic (*magnetite*, protoperoxide), *specular* (*hematite* proper, *red hematite*, anhydrous peroxide), *brown iron ore* (*hematite*, *brown hematite*, *limonite*, etc., hydrated peroxides), *spathic* (*siderite*, carbonate), clay-ironstone (*black band*, argillaceous *siderite*). See *Fossil ore.*

Ironstone. 1. Iron-ore. 2. See *Irestone.*

Jackhead-pit. A small shaft sunk within a mine.

Jackhead-pump. A subordinate pump in the bottom of a shaft, worked by an attachment to the main pump-rod.

Jack-roll, NEWC. See *Windlass*.

Jadding or *Judding*. See *Holing*.

Jagging. A mode of carrying ore to the reduction-works in bags on horses, mules, etc.

Jars. A part of percussion-drilling apparatus for deep holes, which is placed between the *bit* and the *rods* or *cable*, and which by producing at each up-stroke a decided jar of the *bit* jerks it up, though it may be tightly wedged in the hole.

Jig-brow. See *Jinny-road*.

Jig-chain, S. STAFF.. A chain hooked to the back of a *skip* and running round a post, to prevent its too rapid descent on an inclined plane.

Jigging, CORN. Separating ores according to specific gravity with a sieve agitated up and down in water. The apparatus is called a *jig* or *jigger*.

Jinny-road. A gravity plane under ground.

Jowl, NEWC. A noise made for a signal by hammering at the faces of two levels expected to meet.

Judd, NEWC. In *whole working*, a portion of the coal laid out and ready for extraction; in *pillar working* (*i. e.*, the drawing or extraction of pillars), the yet unremoved portion of a pillar.

Judge, DERB. and NEWC. A measuring-stick to measure coal-work under ground.

Jugglers. Timbers set obliquely against pillars of coal, to carry a plank partition, making a triangular air-passage or man-way.

Jump. 1. PAC. To take possession of a mining claim alleged to have been forfeited or abandoned. 2. A dislocation of a vein.

Jumper, CORN. and NEWC. A drill or boring tool, consisting of a bar, which is "jumped" up and down in the bore-hole.

Kan". See *Cand*.

Keckle-meckle. The poorest kind of lead ore.

Keeve. 1. See *Cauf*. 2. A tub used in collecting grains of heavy ore or metal; a dolly tub.

Kevil, DERB. A veinstone, consisting of a mixture of carbonate of lime and other minerals.

Kibbal or *Kibble*, CORN. and WALES. An iron bucket for raising ore.

Kicker, Ground left in first cutting a vein, for support of its sides.

Kieve, CORN. A tub for *tozing* tin-ore.

Killas, CORN. Clay-slate.

Kind's plug. A wooden plug attached to an iron rod, used in connection with sand for recovering *tubing* from *bore-holes*.

Kirving, NEWC. The cutting made at the bottom of the coal by the *hewer*.

Kit. A wooden vessel.

Knits or *Knots*. Small particles of ore.

Knockings. See *Riddle*.

Knots. Small particles of ore.

Labor, SP. Labor; work; a working. This term is applied in mining to the work which is actually going on, and to the spaces which have been dug out. It includes galleries, cavities, and shafts.

Lagging. Planks, slabs, or small timber, placed over the caps or behind the posts of the timbering, not to carry the main weight, but to form a ceiling or a wall, preventing fragments of rock from falling through.

Lander, CORN. The man at the shaft-mouth who receives the *kibble*.

Landry-box, NEWC. A box at the top of a set of pumps, into which the water is delivered.

Lane-skirting, NEWC. Widening a passage by cutting coal from the side of it.

Lath door-set. A weak lath-frame surrounding a main *door-frame*, the space between being for the insertion of *spills*.

Lath-frame or *crib*. A weak lath-frame, surrounding a main *crib*, the space between being for the insertion of *piles*.

Laths, CORN. The *boards* or *lagging* put behind the *durns*.

Launder, CORN. A wooden trough, gutter or sluice.

Lazadores, SP. Persons employed to collect workmen for a mine.

Lazyback, S. STAFF. The place at the surface where coal is stacked for sale.

Lead (pronounced like the verb *to lead*), PAC. See *Lode*.

Leader, CORN. A small vein leading to a larger one.

Lead-ores. Galena (*galenite* sulphide); *antimonial lead-ore* (*bournonite*, sulphantimonide of lead and copper); *white-lead ore* (*cerussite*, carbonate); *green lead-ore* (*pyromorphite*, the phosphate, or *mimetite* or *mimetesite*, the arseno-chloride); *lead vitriol* (*anglesite*, sulphate); *yellow lead-ore* (*wulfemite*, molybdate); *red lead-ore* (*crocoite*, chromate).

Lead-spar, CORN. Anglesite. See *Lead-ores.*

Leap, DERB. A fault. See *Jump.*

Leat, CORN. A watercourse.

Leath. Applied to the soft part of a vein.

Leavings, CORN. The ores left after the *crop* has been removed.

Ledge, PAC. See *Lode.*

Ledger-wall. See *Foot-wall.*

Leg. A prop of timber supporting the end of a *stull*, or the *cap* of a set of timber.

Level. A horizontal passage or drift into or in a mine. It is customary to work mines by levels at regular intervals in depth, numbered in their order below the adit or drainage level, if there be one.

Lewis. An iron instrument for raising, heavy blocks of stone.

Ley, SP. Proportion of metal in the ore; fineness of bullion; also, an alloy or base metal.

Lid. A flat piece of wood placed between the end of a *prop* or *stempel* and the rock.

Lifters, CORN. The wooden beams used as *stems* for stamps in old-fashioned stamp-mills.

Lifting-dog. A claw-hook for grasping a column of bore-rods while raising or lowering them.

Lignite. See *Coal.*

Limp. An instrument for striking the refuse from the sieve in washing ores.

Lining, NEWC. See *Dialling.*

Linnets, DERB. Oxidized lead-ores.

Lithofracteur. See *Explosives.*

Little Giant. A jointed iron nozzle used in hydraulic mining.

Loam. An impure potter's clay, containing mica or iron ochre.

Location. 1. The act of fixing the boundaries of a mining claim, according to law. 2. The claim itself.

Loch, DERB. and WALES. See *Vugg.*

Lock-timber. An old plan of putting in *stull-pieces* in Cornwall and Devon. The pieces were called *lock-pieces.*

Lode, CORN. Strictly a fissure in the country-rock filled with mineral; usually applied to metalliferous lodes. In general miner's usage, a *lode*, *vein*, or *ledge* is a tabular deposit of valuable mineral between definite boundaries. Whether it be a fissure formation or not is not always known, and does not affect the legal title under the United States federal and local statutes and customs relative to lodes. But it must not be a placer, *i. e.*, it must consist of quartz or other rock *in place*, and bearing valuable mineral.

Lodge, WALES. See *Platt.*

Log, S. STAFF. A balance-weight near the end of the hoisting-rope of a shaft, to prevent its running back over the pulley.

Long-tom, PAC. A kind of gold-washing cradle.

Long-wall. A method of coal mining by which the whole seam is taken out as the working faces progress, and the roof is allowed to fall behind the workers, except where passages must be kept open, or where the *gob* being packed in the space formerly occupied by the coal, prevents caving. According as the work of extraction begins at the boundary of the *winning*, and converges back to the shaft, or begins with the coal nearest the shaft and proceeds outward to the boundaries, it is called *long-wall retreating* or *long wall advancing.*

Loob or *loobs*, CORN. The clayey or slimy portion washed out of tin-ore in *dressing.*

Loop-drag. An eye at the end of a rod through which tow is passed for cleaning bore-holes.

Loose-end. A gangway in *long-wall* working, driven so that one side is solid ground while the other opens upon old workings. See *Fast-end.*

Lorry. A hand car used on mine tramways.

Lost level, CORN. "Level" is "lost" when a gallery has been driven with an unnecessarily great departure from the horizontal.

Lowe, NEWC. A light. A "piece of lowe" is part of a candle.

Lum. A chimney over an upcast pit.

Lump-coal, PENN. See *Coal*.

Lying-wall. See *Foot-wall*.

Machine-whim. A rotary steam-engine for winding.

Magistral, SP. A powder of roasted copper pyrites, used in the amalgamation of silver ores.

Main-rod, CORN. See *Pump-rod*.

Mainway. A *gangway* or principal passage.

Makings, NEWC. The small coals hewn out in *kirving*.

Mallet, CORN. The sledge hammer used for striking or *beating* the *borer*.

Mandril. See *Maundril*.

Manganese-ores. *Gray oxide* (*pyrolusite polianite*, anhydrous peroxide, and *manganite*, hydrated sesquioxide); *black manganese* (*hausmannite*, protoperoxide); *braunite* (anhydrous sesquioxide); *red manganese ore* (*rhodochrosite*, a carbonate, or *rhodonite*, a silicate); also, manganiferous iron ores.

Man-hole, CORN. The hole in a *sollar* through which men pass upon the ladder or from one ladder to the next.

Man machine or *Man-engine*, CORN. and DERB. A mechanical lift for lowering and raising miners in a shaft, by means of a reciprocating vertical rod of heavy timber with platforms at intervals, or of two such rods, moving in opposite directions. In the former case, stationary platforms are placed in the shaft, so that the miner in descending, for instance, can step from the moving platform at the end of the down-stroke, and step back upon the next platform below at the beginning of the next downstroke. When two rods are employed, the miner steps from the platform on one rod to that on the other.

Man-of-war, STAFF. A small pillar of coal left in a critical spot; also, a principal support in thick coal workings.

Manta, SP. Blanket; sack of ore.

Manway. A small passage, used by workmen, but not for transportation.

Maquilla, SP. A mill where ore is ground on shares.

Marl. Calcareous clay, sometimes used for the hearths of cupelling-furnaces.

Mass-copper, LAKE SUP. Native copper, occurring in large masses.

Matrix. The rock or earthy material containing a mineral or metallic ore; the *gangue*.

Maul, DERB. A large hammer or mallet.

Maundril, DERB. and S. WALES, A prying *pick* with two prongs.

Mear, DERB. Thirty-two yards of ground measured on the vein.

Measures. Strata of coal, or the formation containing coal beds.

Meat-earth. The vegetable mould.

Meetings, NEWC. The place at middle-depth of a *shaft*, *slope* or *plane*, where ascending and descending cars pass each other.

Merced, SP. A gift. This term is applied to a grant which is made without any valuable consideration.

Mercury-ores. Native mercury; *cinnabar* (sulphide).

Metal, SP. 1. This term is applied both to the ore and to the metal extracted from it. It is sometimes used for vein, and even for a mine itself. *Metal en piedra*, ore in the rough state. *Metal ordinario*, common ore. *Metal pepena*, selected ore. *Metal de ayuda*, ore used to assist the smelting of other ores. 2. SCOT. All the rocks met with in mining ore. 3. *Road metal*, rock used in macadamizing roads.

Mica-powder. See *Explosives*.

Mill, ENG. 1. By common usage, any establishment for reducing ores by other means than smelting. More strictly, a place or a machine in which ore or rock is crushed. 2. An excavation made in the *country* rock, by a *cross-cut* from the workings on a vein, to obtain waste for *gobbing*. It is left without timber so that the roof may fall in and furnish the required rock. 3. CORN. A passage through which ore is shot underground. See *Pass* and *Shoot*.

Mill-run, PAC. 1. The work of an amalgamating mill between two *clean-ups*. 2. A test of a given quantity of ore by actual treatment in a mill.

Mine. 1. In general, any excavation for minerals. More strictly, subterranean workings, as distinguished from *quarries*, *placer* and *hydraulic* mines, and surface or open works. The distinction between the French terms *mine* and *minière* results entirely

from the law, and depends upon the depth of the working. The former is the more general term, and, ordinarily speaking, includes the latter, which signifies shallow or surface workings. 2. In a military sense, a mine is a subterranean gallery run under an enemy's works, to be subsequently exploded.

Miner, PENN. The workman who *cuts* the coal, as distinguished from the *laborer* who loads the wagons, etc.

Mineral. In miners' parlance, ore.

Mineral caoutchouc. Elastic bitumen.

Mineral charcoal. A pulverulent, lustreless substance, showing distinct vegetable structure, and containing a high percentage of carbon with little hydrogen and oxygen, occurring in thin layers in bituminous coal.

Mineralized. Charged or impregnated with metalliferous mineral.

Mineral oil or *Naphtha.* A limpid or yellowish liquid, lighter than water, and consisting of hydrocarbons. *Petroleum* is heavier than naphtha, and dark-greenish in color when crude. Both are exuded from the rocks; but naphtha can be distilled from petroleum.

Mineral pitch. Asphaltum.

Mineral right. The ownership of the minerals under a given surface, with the right to enter thereon, mine, and remove them. It may be separated from the surface ownership, but, if not so separated by distinct conveyance, the latter includes it.

Mine-rent. The rent or royalty paid to the owner of a mineral right by the operator of the mine—usually dependent, above a fixed minimum, upon the quantity of product.

Mineria, SP. Mining. This term embraces the whole subject, including both mines and miners, and also the operations of wokring mines and of reducing their ores. It, however, is often used in a more restricted sense.

Minero, SP. Miner. This term is not limited to those who work mines, but includes their owners, and all who have the qualifications prescribed in the ordinances, and are enrolled as members of the body or craft. Many of the laborers who work in mines are not, technically speaking, miners. This term is sometimes used in the old laws for *mine.*

Miners' inch, PAC. A local unit for the measurement of water supplied to hydraulic miners. It is the amount of water flowing under a certain head through one square inch of the total section of a certain opening, for a certain number of hours daily. All these conditions vary at different localities. At Smartsville, Cal., the discharge opening is a horizontal slit, 4 inches wide, in a 2-inch plank, with the standing head of water in the feed-box 9 inches above the middle of the slit. Each square inch of this opening will discharge 1.76 cubic feet per minute. A miners' inch in use in El Dorado county, Cal., discharges 1.39 cubic feet per minute. At North Bloomfield, Cal., and other places, the discharge is 50 inches long by 2 wide (giving 100 miners' inches) through a 3-inch plank, with the water 7 inches above the centre of the opening. Each inch is 1.50 to 1.57 cubic feet per minute in practice, or 59.05 to 61.6 per cent. of the theoretical discharge. These figures are taken from the paper of A. J. Bowie, jr., on "Hydraulic Mining in California," *Trans. Am. Inst. M. E.*, vol. vi, p. 59.

Mineta, SP. A little mine; a chamber, or cavity.

Mispickel, GERM. Arsenical pyrites.

Mistress, NEWC. A lantern used in coal mines.

Mobby, S. STAFF. A leathern girdle, with small chain attached, used by the boys who draw *bowkes.*

Mock-lead, CORN. Zincblende.

Moil or *Moyle*, CORN. A drill pointed like a *gad.*

Monitor, PAC. A kind of nozzle used in *hydraulicking.*

Monkey-drift. A small prospecting drift.

Monoclinal. Applied to any limited portion of the earth's crust throughout which the strata dip in the same direction.

Moorstone, CORN. Loose masses of granite found in Cornish moors.

More, CORN. A quantity of ore in a particular part of a lode, as a *more* of tin.

Mortar. 1. A heavy iron vessel, in which rock is crushed by hand with a pestle, for sampling or assaying. 2. The receptacle beneath the stamps in a stamp mill, in which the dies are placed, and into which the rock is fed to be crushed.

Mote. See *Squibb.*

Mothergate, NEWC. The main passage in a district of workings.

Mountain limestone. The English designation of a limestone of the lower part of the carboniferous age; called also subcarboniferous limestone.

Mouth. The end of a shaft or adit emerging at the surface.

Mucks, S. STAFF. See *Smut.*

Muller. The stone or iron in an *arrastre* or grinding or amalgamating pan, which is dragged around on the bed to grind and mix the ore-bearing rock.

Mun, CORN. Any fusible metal.

Mundic, CORN. Iron pyrites. White *mundic* is *mispickel.*

Narrow work. The driving of *gangways* or *airways;* also, any *dead work.*

Nasmyth hammer. A steam-hammer, having the head attached to the piston-rod, and operated by the direct force of the steam.

Native. Occurring in nature; not artificially formed. Usually applied to the metals.

Nays, CORN. See *Nogs.*

Needle or *Nail*, CORN. A copper or copper-pointed implement, placed in a bore-hole during charging, to make, by its withdrawal, an aperture for the insertion of the *rush* or train.

Negrillo, SP. A silver-ore; black sulphuret of silver.

Neptune powder. See *Explosives.*

Niccoliferous or *Nickeliferous.* Containing nickel.

Nickel ores. Copper-nickel (*niccolite*, arsenide of nickel); *antimonial nickel* (*breithauptite*, antimonide); *white nickel* (*rammelsbergite*, binarsenide); *nickel pyrites* (*pentlandite*, sulphide of nickel and iron, *millerite*, sulphide); *nickeliferous gray antimony* (*ullmannite*, arsenantimonide); *nickeliferous serpentine* (*refdanskite*, hydrous magnesian silicate); also, niccoliferous ores of copper, cobalt, manganese, etc.

Nicking, NEWC. The cutting made by the *hewer* at the side of the *face.* *Nickings* is the small coal produced in making the nicking.

Nicking-trunk. A tub in which metalliferous slimes are washed.

Nip, NEWC. 1. A crush of pillars or workings. 2. See *Pinch.*

Nipping-fork. A tool for supporting a column of bore-rods while raising or lowering them.

Nitroglycerin. See *Explosives.*

Nittings. The refuse of good ore.

Noble metals. The metals which have so little affinity for oxygen (*i. e.*, are so highly electro-negative) that their oxides are reduced by the mere application of heat without a reagent; in other words, the metals least liable to oxidation under ordinary conditions. The list includes gold, silver, mercury, and the platinum group (including palladium, iridium, rhodium, ruthenium, and osmium). The term is of alchemistic origin.

Noddle or *Nodule.* A small rounded mass.

Noger. A *jumper* drill.

Nogs, DERB. and CORN. Square blocks or logs of wood, piled on one another to support a mine roof.

Nose-helve, ENG. See *Frontal hammer.*

Nuts. Small coal.

Ochre. A term applied to metallic oxides occurring in an earthy, pulverulent condition, as iron ochre, molybdic ochre.

Oil-well. A dug or bored well, from which petroleum is obtained by pumping or by natural flow.

Old man. Ancient workings; *goaves.*

Old men. The persons who worked a mine at any former period of which no record remains.

Open cast, SCOT. See *Open cut.*

Open-crib timbering. Shaft timbering with *cribs* alone, placed at intervals.

Open cut. A surface-working, open to daylight.

Openings. The parts of coal mines between the pillars, or the pillars and ribs.

Opens. Large caverns.

Open-work. A quarry or *open cut.*

Operator, PENN. The person, whether proprietor or lessee, actually operating a colliery.

Ore. 1. A natural mineral compound, of which one at least of the elements is a metal. The term is applied more loosely to all metalliferous rock, though it contain the metals in a free state, and occasionally to the compounds of non-metallic substances, as *sulphur ore.* 2. CORN. Copper ore; tin ore being spoken of in Cornwall as *tin.*

Ore-washer. A machine for washing clay and earths out of earthy brown-hematite ores.

Outbye or *Outbyeside*, NEWC. Nearer to the shaft, and hence further from the *fore-winning*.

Outcrop. The portion of a vein or stratum emerging at the surface, or appearing immediately under the soil and surface-*débris*.

Outlet. The passage by which the ventilating current goes out of a mine. See *Upcast*.

Output. The product of a mine.

Overburden. 1. CORN. See *Burden* (1). 2. The waste which overlies the good stone in a quarry.

Overman, ENG. The mining official next in rank below the *manager*, who is next below the *agent*.

Pack. A wall or pillar built of *gob* to support the roof.

Pair or *Pare*, CORN. Two or more miners working in common.

Pan. 1. See *Panning*. 2. A cylindrical vat of iron, stone, or wood, or these combined, in which ore is ground with *mullers* and amalgamated. See *Amalgamation*.

Pane. The striking-face of a hammer.

Panel. 1. A heap of dressed ore. 2. A system of coal-extraction in which the ground is laid off in separate districts or panels, pillars of extra size being left between.

Panning, AUST. and PAC. Washing earth or crushed rock in a pan, by agitation with water, to obtain the particles of greatest specific gravity which it contains (chiefly practiced for gold, also for quicksilver, diamonds, and other gems).

Parachute. 1. A kind of *safety-catch* for shaft cages. 2. In rod-boring, a *cage* with a leather cover to prevent a too rapid fall of the rods in case of accident.

Parcel, CORN. A heap of dressed ore ready for sale.

Parrot-coal, SCOT. See *Coal*.

Parting. A small joint in coal or rock, or a layer of rock in a coal seam.

Pass, CORN. An opening in a mine through which ore is shot from a higher to a lower level. See *Shoot*.

Pavement. The *floor* of a mine.

Pay-streak. The zone in a vein which carries the profitable or *pay* ore.

Peach, CORN. Chlorite.

Pea-coal, PENN. See *Coal*.

Percussion-table. An inclined table, agitated by a series of shocks, and operated at the same time like a *buddle*. It may be made self-discharging and continuous by substituting for the table an endless rubber cloth, slowly moving against the current of water, as in the *Frue vanner*.

Pertinencia, SP. The extent of a mining location in Mexico, to which a title is acquired by denunciation.

Peter or *Peter out*. To fail gradually in size, quantity or quality.

Pick. A pick-axe with one or two points. The usual miners' pick has but one.

Picker or *Poker*. A hand chisel for *dzhuing*, held in one hand and struck with a hammer.

Pick-hammer, A hammer with a point, used in cobbing.

Pike. See *Pick*.

Piking. See *Cobbing*.

Piles. Long thick laths, etc., answering in shafts, in loose or "quick" ground, the same purpose as *spills* in levels, *piles* being driven vertically.

Pillar-and-stall. See *Post-and-stall*.

Pinch, CORN. To contract in width.

Pipe or *Pipe-vein*, DERB. An ore-body of elongated form.

Pipe-clay, U. S. A fine clay found in hydraulic mines.

Pipe-ore. Iron ore (limonite) in vertical pillars, sometimes of conical, sometimes of hour-glass form, imbedded in clay. Probably formed by the union of stalactites and stalagmites in caverns.

Piping, PAC. 1. See *Hydraulicking*. 2. The tubular depression caused by contraction during cooling, on the top of iron or steel ingots.

Pit. A shaft.

Pitch, CORN. 1. The limits of the *set* to tributers. 2. The inclination of a vein, or of the longer axis of an ore-body.

Pitch-bag, CORN. A bag covered with pitch, in which powder is inclosed for charging damp holes.

Pit-coal. See *Coal*.

Pit-eye, ENG. The bottom of the shaft of a coal-mine; also the junction of a shaft and a level.

Pit-eye pillar. A barrier of coal left around a shaft to protect it from caving.

Pit-frame. The framework carrying the pit-pulley.

Pitman. 1. CORN. A man employed to examine the lifts of pumps and the drainage. 2. NEWC. A working miner.

Pitwork, CORN. The pumps and other apparatus of the engine shaft.

Place. See *In place*.

Placer, SP. A deposit of valuable mineral, found in particles in *alluvium* or *diluvium*, or beds of streams, etc. Gold, tin-ore, chromic iron, iron-ore and precious stones, are found in placers. By the United States Revised Statutes, all deposits not classed as veins of rock in place are considered placers.

Plane. An incline, with tracks, upon which materials are raised in cars by means of stationary engine, or are lowered by gravity.

Plank-timbering. The lining of a shaft with rectangular plank frames.

Plank-tubbing. The lining of a shaft with planks, spiked on the inside of *curbs*.

Plat. The map of a survey in horizontal projection.

Plate-shale. A hard argillaceous bed.

Platinum-ores. Mixtures of native platinum in grains with various other metals and minerals.

Platt, CORN. An enlargement of a level near a shaft, where ore may await hoisting, wagons pass each other, etc.

Plomo, SP. Lead. *Piomo-plata*, lead-silver.

Plug. A hammer closely resembling the *bully*.

Plumb. 1. Vertical. 2. Soft.

Plumbago. Graphite.

Plunger. The piston of a force-pump.

Plush-copper. Chalcotrichite, a fibrous red copper ore.

Pocket. 1. A small body of ore. 2. A natural underground reservoir of water. 3. A receptacle, from which coal, ore or waste is loaded into wagons or carts.

Podar. See *Mundic*.

Pointed boxes. Boxes in the form of inverted pyramids or wedges, in which ores, after crushing and sizing, are separated in a current of water.

Pole-tools. The tools used in drilling with rods. See *Cable-tools*.

Polings. Poles used instead of planks for *lagging*.

Poll, CORN. The head or striking part of a miner's hammer.

Poll-pick. A *pick* with a head for breaking away hard *partings* in coal-seams or knocking down rock already seamed by *blasting*.

Polroz, pronounced *Polrose*, CORN. The pit underneath a water-wheel.

Poppet-heads, CORN. A timber frame over a shaft to carry the hoisting pulley.

Post. 1. A pillar of coal or ore. 2. An upright timber.

Post-and-stall. A mode of working coal, in which so much is left as pillar and so much is taken away, forming *grooms* and *thirlings*. The method is called also *bord-and-pillar*, *pillar-and-breast*, etc.

Potstone. Compact steatite.

Potter's clay and *Pipe-clay*. Pure plastic clay, free from iron, and consequently white after burning.

Power-drill. See *Rock-drill*.

Precious metals. See *Noble metals*.

Prian, CORN. Soft white clay.

Pricker. See *Needle*.

Prill, CORN. 1. The best ore after cobbing. 2. See *Button*.

Pringap. The distance between two mining possessions in Derbyshire.

Produce. 1. The marketable ores or minerals produced by mining and *dressing*. 2. CORN. The amount of fine copper in one hundred parts of ore.

Prop. A timber set to carry a roof or other weight acting by compression in the direction of the axis.

Prop-crib timbering. Shaft-timbering with *cribs* kept at the proper distance apart by means of *props*.

Prospecting. Searching for new deposits; also, preliminary explorations to test the value of lodes or placers. The *prospect* is good or bad.

Proving hole. A small *heading* driven to find and follow a coal seam, lost by dislocation.

Pryan. Ore in small pebbles mixed with clay.

Pudding-stone. A conglomerate in which the pebbles are rounded. See *Breccia.*

Pug-tub. See *Settler.*

Pulley-frame. See *Gallows-frame.*

Pulp, PAC. Pulverized ore and water; also applied to dry-crushed ore.

Pulp-assay, PAC. The assay of samples taken from the *ulf* after or during crushing.

Pump-bob. See *Bob.*

Pump-rod. The rod or system of rods (usually heavy beams) connecting the steam-engine at the surface, or at a higher level, with the pump-piston below. See *Balance-bob.*

Pump-station. See *Station.*

Punch or *Puncheon.* See *Leg.*

Punch-prop, NEWC. A short *prop.*

Put, NEWC. To convey coal from the working *breast* to the tramway. This is usually done by young men (*putters*).

Put-work. See *Tut-work.*

Quarry. An open or "day" working, usually for the extraction of building-stone, slate or limestone.

Quartz. 1. Crystalline silica. 2. PAC. Any hard gold or silver ore, as distinguished from gravel or earth. Hence *quartz-mining,* as distinguished from hydraulic, etc.

Quartzose. Containing quartz as a principal ingredient.

Quere, queere or *qweear,* CORN. A small cavity or fissure.

Quick. 1. Applied to a productive vein as distinguished from *dead* or barren. 2. PAC. Quicksilver.

Quick ground. Ground in a loose, incoherent state.

Quicksand. Sand which is (or becomes, upon the access of water), "quick," *i. e.,* shifting, easily movable or semi-liquid.

Quicksilver-ores. See *Mercury-ores.*

Quintal. One hundred pounds avoirdupois.

Race. A small thread of spar or ore.

Rack, CORN. A stationary *buddle.*

Rafter-timbering. Timbering in which the pieces are arranged like the rafters of a house.

Rag-burning, CORN. See *Tin-witts.*

Ragging. A rough *cobbing.*

Raise. See *Rise.*

Rake, DERB. A fissure vein crossing the strata.

Raking-prop. An inclined *prop.*

Ramble, NEWC. A shale bed on the top of a coal seam, which falls as the coal is removed.

Rancho, SP. An estate or property; a farm.

Random. The direction of a *Rake-vein.*.

Rapper. A level or hammer at the top of a shaft or inclined plane, for signals from the bottom.

Reamer. A tool for enlarging a bore-hole.

Record. To enter in the book of the proper officer (usually a district or county officer) the name, position, description, and date of a mining claim or location. See *District.*

Redevance, FR. A tax, duty, or rent. In mining law it means a tax or duty payable to the government or to the surface owner.

Reed, CORN. See *Spire.*

Reef, AUSTR. See *Lode.*

Rend-rock. See *Explosives.*

Renk, NEWC. The average distance coal is brought by the *putters.*

Rests. The arrangement at the top and bottom of a pit for supporting the shaft-cage while changing the tubs or cars.

Retorting. Removing the mercury from an amalgam by volatilizing it in an iron retort, conducting it away, and condensing it.

Rib. 1. In coal mining, the solid coal on the side of a gallery or long-wall face; a pillar or barrier of coal left for support. 2. The solid ore of a vein; an elongated pillar left to support the hanging-wall, in working out a vein.

Ribbed. Containing *bone.*

Ribbon-borer. A boring-tool consisting of a twisted flat steel blade.

Riddle, CORN. and SCOT. A sieve. The large pieces of ore and rock picked out by hand are called *knockings*. The *riddlings* remain on the riddle; the *fell* goes through.

Rider. See *Horse.*

Riffle. A groove or interstice, or a cleat or block so placed as to produce the same effect, in the bottom of a sluice, to catch free gold.

Rim-rock. The bed-rock rising to form the boundary of a placer or gravel deposit.

Ring, NEWC. A gutter cut around a shaft to catch and conduct away the water.

Ringe. See *Cowl.*

Rise or *Riser*, CORN. A shaft or winze excavated upward.

Rise-heading. See *Heading, in long-wall.*

Rivelaine. A pick with one or two points, formed of flat iron, used to undercut coal by scraping instead of striking.

Rob. To extract pillars previously left for support; or, in general, to take out ore or coal from a mine with a view to immediate product, and not to subsequent working.

Rock-breaker. Usually applied to a class of machines, of which Blake's rock-breaker is the type, and in which the rock is crushed between two jaws, both movable, or one fixed and one movable. It is common to use a rock-breaker instead of hand-spalling to prepare ore for further crushing in the stamp-mill.

Rock-drill. A machine for boring in rock, either by percussion, effected by reciprocating motion, or abrasion, effected by rotary motion. Compressed air is the usual motive power, but steam also is used. The Burleigh, Haupt, Ingersoll, Wood, and other machines operate percussively; the *diamond drill* (which see) abrasively.

Rocker. A short trough in which auriferous sands are agitated by oscillation in water, to collect their gold.

Rod-tools. See *Pole-tools.*

Rolley. A large truck carrying two *corves.*

Rolley-way. A *gangway.*

Roof. The rock overlying a bed or flat vein.

Roofing. The wedging of a loaded wagon or horse against the top of an underground passage.

Room, SCOT. See *Breast* and *Post-and-stall.*

Roughs, CORN. Coarse, poor sands, resulting from tin-dressing.

Round coal. See *Lump coal.*

Rounder. See *Reamer.*

Row, CORN. Large, rough stones.

Royalty. The dues of a lessor or landlord of a mine, or of the owner of a patented invention.

Rubber. A gold-quartz amalgamator, in which the slime is rubbed against amalgamated copper surfaces.

Rullers, CORN. The workmen who wheel ore in wheelbarrows underground.

Run, CORN. 1. The natural falling or closing together of underground workings. 2. Certain accidents to the winding apparatus. 3. *By the run.* A method of paying coal miners per linear yard of breast excavated, instead of *by the wagon* of clear coal produced. 4. A long deep trough in which slimes settle. 5. See *Counter.*

Rush, CORN. See *Spire.*

Rusty. Applied to coals discolored by water or exposure, as well as to quartz, etc., discolored by iron oxide.

Rusty gold, PAC. Free gold, which does not easily amalgamate, the particles being coated, as is supposed, with oxide of iron.

Saddle. An anticlinal in a bed or flat vein.

Safety-cage. A cage with a *safety catch.*

Safety car. See *Barney.*

Safety-catch. An automatic device for preventing the fall of a cage in a shaft, or a car in an incline, if the supporting cable breaks.

Safety-lamp. A lamp, the flame of which is so protected that it will not immediately ignite fire-damp. There are several varieties, invented by Davy, Stephenson, Clanny, and others.

Saline. A salt spring or well; salt works.

Sampson-post. An upright post which supports the walking-beam, communicating motion from the engine to a deep-boring apparatus.

Sand-pump. A cylinder with a valve at the bottom, lowered into a drill-hole from

time to time to take out the accumulated slime resulting from the action of the drill on the rock. Called, also, *Shell-pump* and *Sledger*.

Scal, CORN. A portion of earth or rock which separates and falls from the main body.

Scale. 1. The crust of metallic oxide formed by cooling of hot metals in air. *Hammer-scale* and *roll-scale* are the flaky oxides which fall from the *bloom*, *ingot*, or *bar*, under hammering or rolling. 2. The incrustation caused in steam-boilers by the evaporation of water containing mineral salts. 3. *A scale of air* (NEWC.) is a small portion of air abstracted from the main current.

Scarcement. A projecting ledge of rock, left in a shaft as footing for a ladder, or to support pit-work, etc.

Scarfing. Splicing timbers, so cut that when joined the resulting piece is not thicker at the joint than elsewhere.

Schist. Crystalline rock, usually micaceous, having a slaty structure.

Schorl. Black tourmaline.

Scovan lode, CORN. A lode having no *gossan* at or near the surface.

Scraper. A tool for cleaning bore-holes.

Screen. A sieve of wire-cloth, grate-bars, or perforated sheet-iron, used to sort ore and coal according to size. Stamp-mortars have screens on one or both sides, to determine the fineness of the escaping pulp.

Screw-bell. A recovering tool in deep boring, ending below in a hollow screw-threaded cone.

Scrin or *Skrin*, DERB. A small subordinate vein.

Seam. 1. A stratum or bed of coal or other mineral. 2. CORN. A horse-load. 3. A *joint*, *cleft*, or *fissure*.

Seat, DERB. The floor of a mine.

Seed-bag. A bag filled with flaxseed and fastened around the tubing in an artesian well, so as to form, by the swelling of the flaxseed when wet, a water-tight packing, preventing percolation down the sides of the bore-hole from upper to lower strata. When the tubing is pulled up the upper fastening of the bag breaks, and it empties itself, thus presenting no resistance to the extraction of the tubing.

Segregate, PAC. To separate the undivided joint ownership of a mining claim into smaller individual "*segregated*" claims.

Segregation. A mineral deposit formed by concentration from the adjacent rock.

Selvage or *Selfedge*. A layer of clay or decomposed rock along a vein-wall. See *Gouge*.

Separator. 1. A machine for separating, with the aid of water or air, materials of different specific gravity. Strictly, a *separator* parts two or more ingredients, both valuable, while a *concentrator* saves but one and rejects the rest; but the terms are often used interchangeably. 2. Any machine for separating materials, as the *magnetic separator* for separating magnetite from its gangue.

Set or *Sett*, CORN. 1. A grant of mining ground, as the assignment of a certain part of a mine under contract or *tribute*. 2. A frame of timber for supporting excavations.

Settler. A tub or vat, in which *pulp* from the amalgamating *pan* or *battery-pulp* is allowed to settle, being stirred in water, to remove the lighter portions.

Shadd, CORN. Smooth, round stones on the surface, containing tin-ore, and indicating a vein.

Shaft. 1. A pit sunk from the surface. 2. The interior of a *shaft-furnace* above the boshes.

Shaft-walls. 1. The sides of a shaft. 2. NEWC. Pillars of coal left near the bottom of a pit.

Shake. 1. A cavern, usually in limestone. 2. A crack in a block of stone.

Shaking-table. See *Percussion-table*.

Shambles. Shelves or benches from one to the other of which successively ore is thrown in raising it to the level above, or to the surface.

Shearing. The vertical side-cutting which, together with *holing* or horizontal undercutting, constitutes the attack upon a *face* of coal.

Shears, CORN. Two high timbers, standing over a shaft and united at the top to carry a pulley, for lifting or lowering timbers, pipes, etc., of greater length than the ordinary hoisting-gear can accommodate.

Sheathing. A close partition or covering of planks.

Sheave. The groove-wheel of a pulley.

Shelf, CORN. The solid rock or *bed-rock*, especially under alluvial tin-deposits.

Shell-pump. See *Sand-pump*.

Shelly. The condition of coal which has been so much faulted and twisted that it is not massive, but easily breaks into conchoidal pieces.

Shet, S. STAFF. The broken-down roof of a coal-mine.

Shift. 1. The time for a miner's work in one day. 2. The gang of men working for that period, as the *day-shift*, the *night-shift*.

Shift-boss. The foreman in charge of a *shift* of men.

Shiver. 1. Shale; a hard argillaceous bed. 2. See *Sheave*.

Shoad, CORN. Ore washed or detached from the vein naturally. See *Float-ore*.

Shoading or *Shoding*, CORN. The tracking of boulders towards the vein or rock from which they have come.

Shoe. A piece of iron or steel, attached to the bottom of a *stamp* or *muller*, for grinding ore. The shoe can be replaced when worn out.

Shoot. 1. See *Chute*. 2. See *Blast*. A *shot* is a single operation of *blasting*.

Shooting-needle. A sharp metal rod, to form a vent-hole through the tamping to a blasting-charge.

Shore-nose shell. A cylindrical tool, cut obliquely at bottom, for boring through hard clay.

Show. 1. The pale-blue, lambent flame on the top of a common candle-flame, indicating the presence of fire-damp. 2. See *Blossom*.

Skute. See *Chute*.

Sicker. See *Zighyr*.

Siddle. The inclination of a seam of coal.

Side-basset. A transverse direction to the line of dip in strata.

Side-guide. See *Guard*.

Side-laning, S. STAFF. Widening the *gate-road* (abandoned for that purpose) so as to make it part of a new *side of work*.

Side of work, S. STAFF. The series of *breasts* and *pillars* connected with a *gate-road* in a colliery.

Sigger. See *Zighyr*.

Silicious. Consisting of or containing silex or quartz.

Sill. 1. A stratum. 2. A piece of wood laid across a drift to constitute a frame with the posts and to carry the track of the tramway.

Silt. See *Alluvium*.

Silver ores. *Silver-glance* (*argentite*, sulphide); *horn-silver* (*cerargyrite*, chloride); *dark-ruby silver* (*pyrargyrite*, sulphantimonide); *light-ruby silver*, (*proustite*, sulpharsenide); *brittle silver-glance* (*stephanite*, antimonial sulphide of silver, and *polybasite*, arsenical and antimonial sulphide of several metals); *white ore* (argentiferous gray copper, *tetrahedrite*, antimonial sulphide of iron, zinc, copper, lead, and silver); *stetefeldtite* and *partzite* (antimoniates); also, argentiferous lead, copper, and zinc ores.

Sinker-bar. A heavy bar attached above the *jars* to *cable-drilling* tools.

Sit or *Sits*. A settling or falling of the top of workings. See *Thrust* and *Creep*.

Sizing. Separating ores according to size of particles, preparatory to *dressing*.

Skep or *Skip*, CORN. An iron box working between guides, in which ore or rock is hoisted. It is distinguished from a *kibble*, which hangs free in the shaft.

Skimmings or *Skimpings*, CORN. The poorest part skimmed off the *jigger*.

Slack. Small coal, coal dirt; See *Culm* (2).

Slant. A heading driven diagonally between the dip and the strike of a coal-seam; also called a *run*. See *Run* and *Counter*.

Slate. A sedimentary rock splitting into thin plates. The terms *slate*, *shale* and *schist* are not sharply distinguished in common use, particularly among older writers. Strictly, according to recent authors, *slate* may be crystalline; *schist* is always so; *shale* is always (and *slate* most frequently) non-crystalline. There is also a notion of coarser or less complete lamination attached to the term *shale*, as of a rock splitting into thicker or less perfect plates than *slate*. Both may be argillaceous, arenaceous, calcareous, silicious, etc., according to their lithological character. The terms *slaty*, *shaly* and *schistose* describe the respective structures.

Sleck, NEWC. Mud deposited by water in a mine.

Sleeper. See *Sill*.

Sleeping-table, CORN. A stationary *buddle*. For the strict distinction sometimes made between *buddle* and *table*, see *Buddle*.

Slickensides. Polished and sometimes striated surfaces on the walls of a vein, or on interior joints of the vein-material or of rock-masses. They are the result of movement.

Slide, CORN. 1. A vein of clay intersecting and dislocating a vein vertically; or the vertical dislocation itself. 2. An upright rail fixed in a shaft with corresponding grooves for steadying the cages.

Slide-joint. A connection acting in *rod-boring*, like the jars in *rope-boring*.

Slimes, CORN. The most finely crushed ores.

Slime-table. See *Buddle.*

Sline. Natural traverse cleavage of rock.

Slip. A vertical dislocation of the rocks.

Slipes, S. STAFF. Sledge-runners, upon which a *skip* is dragged from the working breast to the tramway.

Slit. A communication between two levels.

Slitter. See *Pick.*

Sliver, ENG. A thin wooden strip, inserted into grooves in the adjacent edges of two boards of a *brattice* to make it air-tight.

Slope. See *Incline.*

Sludge. See *Slimes.*

Sludger. See *Sand-pump.*

Sluicing. Washing auriferous earth through long boxes (*sluices*).

Slums, PAC. See *Slimes.*

Smeddum, SCOT. The smaller particles which pass through the sieve of the *hutch.*

Smift. A fuse or slow match.

Smitham or *Smiddan*, DERB. Lead-ore dust.

Smut. 1. S. STAFF. Bad, soft coal, containing much earthy matter. 2. See *Blossom.*

Snoff, CORN. A short candle-end, put under a fuse to light it.

Snore-hole. The hole in the lower part or *wind-bore* of a mining pump, to admit the water.

Soapstone. Compact talc or steatite; often applied incorrectly to soft unctuous clays or marls.

Sole. The bottom of a level.

Solid crib-timbering. Shaft-timbering with cribs laid solidly upon one another.

Sollar, CORN. A platform in a shaft, usually constituting a landing between two ladders.

Sough, DERB. See *Adit.*

Spale, CORN. To fine for disobedience of orders.

Spall or *Spowl.* To break ore. *Ragging* and *cobbing* are respectively coarser and finer breaking than *spalling*, but the terms are often used interchangeably. Pieces of ore thus broken are called *spalls.*

Spar. A name given by miners to any earthy mineral having a distinct cleavable structure and some lustre; in Cornwall usually quartz.

Spears. See *Pump-rods.*

Spel or *Spell.* A change or turn.

Spend. To break ground; to continue working.

Spiking-curb, ENG. A *curb* to the inside of which *plank-tubing* is spiked.

Spilling, CORN. A process of driving or sinking through very loose ground.

Spills, CORN. Long thick laths or poles driven ahead horizontally around the door-frames, in running levels in loose ground—a kind of *lagging* put in ahead of the main timbering.

Spire. The tube carrying the train to the charge in a blast-hole. Also called *reed* or *rush*, because these, as well as spires of grass, are used for the purpose.

Split. 1. To divide a ventilating current. 2. When a *parting* in a coal-seam becomes so thick that the two portions of the seam must be worked separately, each is called a *split.* See *Bench.*

Spoon. 1. An instrument made of an ox or buffalo horn, in which earth or *pulp* may be delicately tested by washing to detect gold, amalgam, etc. 2 (or *Spoon-end*). The edge of a coal-basin when the coal-seam *spoons*, *i. e.*, rises to the surface, after growing thinner as it approaches its termination.

Spout, S. STAFF. See *Air-head.*

Sprag. 1. A *prop.* 2. A short round piece of wood used to block the wheels of a car.

Spreader. A horizontal timber below the *cap* of a set, to stiffen the *legs*, and to support the *brattice* when there are two air-courses in the same gangway.

Spreaders. Pieces of timber stretched across a shaft, as a temporary support of the walls.

Spud. A nail, resembling a horseshoe nail, with a hole in the head, driven into mine-timbering, or into a wooden plug inserted in the rock, to mark a surveying-station.

Spur. A branch leaving a vein, but not returning to it.

Spurns, S. STAFF. Small connecting masses of coal, left for safety during the operation of cutting, between the *hanging coal* and the main body.

Square sets. A kind of timbering used in large spaces.

Squat, CORN. 1. Tin-ore mixed with spar. 2. See *Bunch of ore.*

Squeeze. The settling, without breaking, of the *roof* over a considerable area of workings.

Squib. A slow-match or safety-fuse, used with a *barrel.*

Stack. A chimney.

Stall, S. STAFF. See *Room*, *Breast*, and *Post-and-Stall.*

Stamping. Reducing to the desired fineness in a *stamp-mill.* The grain is usually not so fine as that produced by grinding in *pans.*

Stamp-mill. An apparatus (also the building containing the apparatus) in which rock is crushed by descending pestles (*stamps*), operated by water or steam-power. Amalgamation is usually combined with the crushing when gold or silver is the metal sought, but copper and tin-ores, etc., are stamped to prepare them for *dressing.*

Stamp-work, LAKE SUP. Rock containing disseminated native copper.

Stanchion. See *Leg.*

Standage, ENG. A large *sump*, or more than one, acting as a reservoir.

Stannary. A tin-mine or tin-works.

Station. 1. See *Platt.* 2. Also, a similar enlargement of shaft or level to receive a balance-bob (*bob-station*), pump (*pump-station*), or tank (*tank-station*).

Steamboat coal, PENN. See *Coal.*

Steam-coal. See *Coal.*

Stemmer, NEWC. See *Tamping-bar.*

Stemming, NEWC. The tamping put above the charge in a bore-hole.

Stempel or *Stemple.* 1. DERB. One of the cross-bars of wood placed in a mine-shaft to serve as steps. 2. A *stull-piece.* 3. A *cap*, both sides of which are *hitched* instead of being supported upon legs. See *Stull.*

Stenton, NEWC. A passage between two *winning headways.* A *stenton-wall* is the *pillar* of coal between them.

Step-vein. A vein alternately cutting through the strata of *country-rock*, and running parallel with them.

Stirrup. See *Temper-screw.*

Stockwork (GERM., *Stockwerk*). An ore-deposit of such a form that it is worked in floors or stories. It may be a solid mass of ore, or a rock-mass so interpenetrated by small veins of ore that the whole must be mined together. *Stockworks* are distinguished from *tabular* or *sheet*-deposits (veins, beds), which have a small thickness in comparison with their extension in the main plane of the deposit (that is, in *strike* and *dip*).

Stone-coal. See *Coal.*

Stone-head, ENG. The solid rock first encountered in sinking a shaft.

Stoop-and-Rooms, SCOT. See *Post-and-Stall.*

Stope, CORN. To excavate ore in a vein by driving horizontally upon it a series of workings, one immediately over the other, or vice versa. Each horizontal working is called a stope (probably a corruption of *step*), because when a number of them are in progress, each working face being a little in advance of the next above or below, the whole face under attack assumes the shape of a flight of steps. When the first stope is begun at a lower corner of the body of ore to be removed, and, after it has advanced a convenient distance, the next is commenced above it, and so on, the process is called *over-hand* stoping. When the first stope begins at an upper corner, and the succeeding ones are below it, it is *under-hand* stoping. The term *stoping* is loosely applied to any subterranean extraction of ore except that which is incidentally performed in sinking shafts, driving levels, etc., for the purpose of opening the mine.

Stopping. 1. See *Stoping.* 2. A partition of boards, masonry, or rubbish, to stop the air-current in a mine, or force it to take a special desired direction.

Stove-coal, PENN. See *Coal.*

Stowbord, NEWC. A place into which rubbish is put.

Stowce. 1. A windlass. 2. DERB. *Stowces* are wooden landmarks, placed to indicate possession of mining ground.

Stowing. A method of mining in which all the material of the vein is removed and the waste is packed into the space left by the working.

Strake, CORN. An inclined *launder* for separating or *tying* ground ore in water.

Stratum. A bed or layer.

Streak. The powder of a mineral, or the mark which it makes when rubbed upon a harder surface.

Stream-tin, CORN. Tin-ore in alluvial deposits, as pebbles.

Stream work, CORN. Work on *stream-tin.*

Streamers, CORN. Searchers for *stream-tin.*

Striated. Marked with parallel grooves or *striæ.*

Strike. The direction of a horizontal line, drawn in the middle plane of a vein or stratum not horizontal.

String, CORN. A small vein.

Stringing-deals, ENG. Thin planks, nailed to the inside of the curbs in a shaft, so as to suspend each curb from those above it.

Strip. To remove from a quarry, or other open working, the overlying earth and disintegrated or barren surface rock.

Studdles, CORN. 1. Props supporting the middle of *stulls.* 2. Distance-pieces between successive frames of timbering.

Stull, CORN. A platform (*stull-covering*), laid on timbers (*stull-pieces*), braced across a working from side to side, to support workmen or to carry ore or waste.

Stulm. See *Adit.* From the GERM. *Stollen.*

Stump, PENN. A small pillar of coal, left at the foot of a *breast* to protect the *gangway.*

Sturt. A *tribute*-bargain which turns out profitable for the miner.

Stythe, NEWC. *Choke-damp.*

Sublimation-theory. The theory that a vein was filled first with metallic vapors.

Sucker-rod. The *pump-rod* of an oil well.

Sulphur. 1. Iron pyrites. 2. Carburetted or sulphuretted hydrogen.

Sulphurets, PAC. In miners' phrase, the undecomposed metallic ores, usually sulphides. Chiefly applied to auriferous pyrites.

Sump, CORN. (from GERM. *Sumpf.*). The space left below the lowest landing in a shaft, to collect the mine-water. The lowest pump draws from it. 2. NEWC. That part of a *judd* of coal which is extracted first.

Sump fuse. A waterproof fuse.

Swad, NEWC. A thin layer of stone or refuse coal at the bottom of the seam.

Swape. An implement for shaping the edge of a boring-bit.

Swalls, *Swallows* or *Swallow-holes.* Surface holes caused by the subsidence of rocks; or openings into which mine-water disappears.

Swamp. A depression in a nearly horizontal bed, in which water may collect.

Sweeping table. A stationary *buddle.*

Synclinal. The axis of a depression of the strata. Opposed to *anticlinal*, which is the axis of an elevation.

Tackle, CORN. The *windlass*, rope, and *kibble.*

Tacklers, DERB. Small chains put around loaded *corves.*

Tail-house, *Tail-mill.* The buildings in which *tailings* are treated.

Tailing. See *Blossom.*

Tailings. The lighter and sandy portions of the ore on a buddle or in a sluice. The *headings* are accumulated or discharged at the upper end, the *middlings* in the middle, while the *tailings* escape at the foot. The term *tailings* is used in a general sense for the refuse of reduction processes other than smelting.

Tail-race. The channel in which *tailings*, suspended in water, are conducted away.

Tamp. To fill (usually with clay-tamping) the bore-hole or other opening through which an explosive charge has been introduced for blasting.

Tamping-bar, CORN. A rod used in tamping.

Tank. A subterranean reservoir into which a pump delivers water for another pump to raise.

Temper-screw. A screw-connection for lengthening the column of boring-rods as boring advances.

Tepetate, SP. Waste rock and rubbish in a mine.

Terne-plate. A variety of tin-plate coated with an alloy of one-third tin, and two-thirds lead.

Thermo-aqueous, Produced by, or related to, the action of heated waters.

Thill, NEWC. The floor of a coal mine.

Thirling. See *Thurling*.

Throw. A dislocation or fault of a vein or stratum, which has been *thrown up* or *down* by the movement.

Throwing, S. STAFF. The operation of breaking out the *spurns*, so as to leave the *hanging coal* unsupported, except by its own cohesion.

Thrust. The breaking down or the slow descent of the roof of a *gangway*. Compare *Creep*.

Thurl, S. STAFF. To cut through from one working into another.

Thurlings. Passages cut from *room* to *room*, in *post-and-stall* working.

Thurst. The ruins of the fallen roof, after *pillars* and *stalls* have been removed.

Ticketings, CORN. Meetings for the sale of ores.

Tick-hole. See *Vugg*.

Tierras, SP. Fine dirt impregnated with quicksilver ore, which must be made into *adobes* before roasting.

Tiger. See *Nipping fork*.

Tiller. See *Brace-head*.

Tin-frame, CORN. A *sleeping-table* used in dressing tin-ore slimes, and discharged by turning it upon an axis till its surface is nearly vertical, and then dashing water over it, to remove the enriched deposit. A "machine frame" or "self-acting frame" thus discharges itself automatically at intervals; a "hand-frame" is turned for the purpose by hand.

Tin-ores. Tinstone (*cassiterite*, oxide); *tin-pyrites* (*stannite*, sulphide of tin, copper, iron and zinc). The latter is not, so far as I am aware, now actually treated for tin. Ores containing it are smelted as copper-ores, and the tin is lost.

Tin-witts, CORN. The product of the first dressing of tin-ores, containing, besides tinstone, other heavy minerals (wolfram and metallic sulphides). It must be roasted before it can be further concentrated. Its first or partial roasting is called *rag-burning*.

Tipe. To upset or "dump" a *skip*.

Toadstone. A kind of trap-rock.

Ton. For many things, such as coal and iron, the ton in use is the *long* ton of 20 hundredweight at 112 pounds avoirdupois. Allowances ("sandage," etc), are made in weighing pig-iron and other crude metals, so that the "smelter's ton" is still greater. The Cornish mining ton is 21 hundredweight, or 2352 pounds avoirdupois. In gold and silver mining, and throughout the Western States, the ton is the *short* ton of 2000 pounds.

Tonite. A nitrated gun-cotton, used in blasting.

Top-wall. See *Hanging-wall*.

Tossing or *tozing*, CORN. 1. Washing ores by violent agitation in water, their subsidence being accelerated by *packing* or striking with a hammer the *keeve* in which the operation is performed. *Chimming* is a similar process on a smaller scale. 2. Refining tin by allowing it, while molten, to fall several feet through the air.

Towt, NEWC. A piece of old rope.

Tram, WALES. 1. A four-wheeled truck to carry a *tub*, *corve* or *hutch*, or to carry coal or ore on a railroad. 2. One of the rails of a *tramroad* or railroad.

Trap. In miners' parlance, any dark, igneous or apparently igneous, or volcanic rock.

Trap-door. See *Weather-door*.

Trapische, SP. A rude grinding machine, composed of two stones, of which the upper is fastened to a long pole.

Trapper, NEWC. A boy who opens and shuts the *trap-door*.

Tribute, CORN. A portion of ore given to the miner for his labor. *Tributors* are miners working under contract, to be paid by a *tribute* of ore or its equivalent price, the basis of the remuneration being the amount of clean ore contained in the crude product.

Trogue. A wooden trough, forming a drain.

Trolly. A small four or two-wheeled truck without a body.

Trombe or *Trompe*, FR. An apparatus for producing an air-blast by means of a falling stream of water, which mechanically carries air down with it, to be subsequently separated and compressed in a reservoir or drum below.

Trommel. A revolving sieve for *sizing* ores.

Trouble, NEWC. A dislocation of the strata.

Trow. A wooden channel for air or water.

Trumpeting, S. STAFF. A small channel cut behind the brick-work of a shaft lined with masonry.

Trunk, CORN. A long narrow box or square tube, usually of wood.

Trunking, CORN. Separating slimes by means of a *trunk*.

Tubbing. A shaft-lining of casks or cylindrical caissons, of iron or wood. See *Plank-tubbing*.

Tubing. Lining a deep bore-hole by driving down iron tubes.

Tubs, NEWC. Boxes for lowering coals. See *Trolly*.

Tuff or *Tufa*. A soft sandstone or calcareous deposit.

Tug, DERB. The iron hook of a hoisting bucket, to which the *tacklers* are attached.

Tunnel. 1. A nearly horizontal underground passage, open at both ends to *day*. 2. PAC. See *Adit*.

Turbary. A peat-bog.

Turn. A pit sunk in a *drift*.

Turning-house. The first working on a vein after it has been intersected by a *cross-cut*.

Tut-work. See *Dead work*. In general, work paid for by the amount of excavation, not (as in *tribute*) of product.

Tying, CORN. See *Strake*.

Under-hand. See *Stope*.

Underlayer, CORN. A vertical shaft sunk to cut a lode.

Underlie or *Underlay*, CORN. The departure of a vein or stratum from the vertical, usually measured in horizontal feet per fathom of inclined depth. Thus a *dip* of 60° is an *underlay* of three feet per fathom. The *underlay* expressed in feet per fathom is six times the natural cosine of the angle of the dip. See *Dip*.

Unwater. To drain or pump water from a mine.

Upcast. 1. A lifting of a coal seam by a dike. 2. The opening through which the ventilating current passes out of a mine. See *Downcast*.

Upraise. See *Rise*.

Vamping. The *debris* of a stope, which forms a hard mass under the feet of the miner.

Vanning, CORN. A method of washing ore on a shovel, analogous to *panning*. Concentrating machines are sometimes called *vanners*. See *Percussion-table*.

Vein. See *Lode*. The term *vein* is also sometimes applied to small threads, or subordinate features of a larger deposit.

Vena, SP. A small vein.

Vend, NEWC. The total sales of coal from a colliery.

Verifier. A tool used in deep boring for detaching and bringing to the surface portions of the wall of the bore-hole at any desired depth.

Vestry, NEWC. Refuse.

Veta, SP. A vein. As compared with *vena*, *veta* is the main vein.

Viewer. A colliery manager.

Vigorite. See *Explosives*.

Vug, *vugg*, or *vugh*. A cavity in the rock, usually lined with a crystalline incrustation. See *Geode*.

Wad hook. A tool with two spiral steel blades for removing fragments from the bottom of deep bore-holes.

Wagon. A four-wheeled vehicle used in coal mines, usually containing 75 to 100 cubic feet.

Wagon-breast. A *breast* into which wagons can be taken.

Wale, NEWC. To clean coal by picking out the refuse by hand. The boys who do this are called *Walers*.

Wall. 1. The side of a level or drift. 2. The *country-rock* bounding a vein laterally.

Wall-plates, CORN. The two side-pieces of a timber frame in a shaft, parallel to the strike of the lode when the shaft is sunk on the lode. The other two pieces are the *end-pieces*.

Washer. See *Ore-washer*.

Waste, NEWC. Old workings. The signification seems to include that of both *goaf* and *gob*.

Wastrel. A tract of waste land or any waste material.

Water-barrel or *Water-tank*. A barrel or box, with a self-acting valve at the bottom, used for hoisting water in lieu of a pump.

Water-level. 1. The level at which, by natural or artificial drainage, water is removed from a mine or mineral deposit. 2. A drift at the water-level.

Water-packer. A water-tight packing of leather between the pipe and the walls of a bore-hole.

Way-shaft. See *Blind-shaft*.

Weather-door. A door in a level to regulate the ventilating current.

Weathering. Changing under the effect of continued exposure to atmospheric agencies.

Wedging-curb or *Wedging-crib*, ENG. A *curb* used to make a water-tight packing between the *tubbing* in a shaft and the rock-walls, by means of split *deals*, moss, and wedges, driven in between the *curb* and the rock.

Wharl or *Wharr*, NEWC. A sledge for hauling corves in low drifts.

Wheal, CORN. A mine.

Whim or *Whimsey*. A machine for hoisting by means of a vertical drum, revolved by horse or steam power.

Whin or *Whinstone*, NEWC. Basaltic rock; any hard, unstratified rock. In Scotland, greenstone.

Whip. The simplest horse-power hoisting machine, consisting of a fixed pulley and a hoisting rope passing over it, to which the animal is directly attached.

White-ash, PENN. See *Coal*.

White-damp. A poisonous gas sometimes (more rarely than fire damp or choke-damp, etc.,) encountered in coal mines. It has been supposed to contain carbonic oxide, but this is doubtful.

White tin, CORN. *Metallic tin*.

Whits or *Witts*, CORN. See *Tin-witts*.

Whole-working, NEWC. Working where the ground is still whole, *i. e.*, has not been penetrated as yet with breasts. Opposed to *pillar-work*, or the extraction of pillars left to support previous work.

Wild lead. Zinc-blende.

Wicket. A *breast*. See *Breast* and *Post-and-stall*.

Wimble. A shell-auger used for boring in soft ground.

Win. To extract ore or coal.

Windbore, NEWC. The pipe at the bottom of a set of pumps.

Winch or *Windlass*. A man-power hoisting machine, consisting of a horizontal drum with crank handles.

Winding. Hoisting with a rope and drum.

Winds. See *Winze*.

Winning. 1. A new opening. 2. The portion of a coal field laid out for working.

Winning headways, NEWC. Headways driven to explore and open out the coal seam.

Winze. An interior shaft, usually connecting two levels.

Wood-tin. Tinstone of light wood-color.

Work. Ore not yet dressed.

Working. See *Labor*. The Spanish and the English term are synonymous in meaning and alike in application. A *working* may be a *shaft*, *quarry*, *level*, *open-cut*, or *stope*, etc.

Working-barrel, CORN. The cylinder in which a pump piston works.

Working home. Working toward the main shaft in extracting ore or coal, as in *long-wall retreating*.

Working-out. Working away from the main shaft in extracting ore or coal, as in *long-wall advancing*.

Yellow-ore, CORN. Chalcopyrite. See *Copper ores*.

Yokings. See *Stowces*.

Zawn, CORN. A cavern.

Zighyr, *zigger*, or *sicker*, CORN. To percolate, trickle or ooze, as water through a crack. From the GERM., *sickern*.

Zinc-ores. *Red ore* (*zincite*, oxide); *black-jack* (*zinc-blende*, *spahlerite*, sulphide); *zinc-spar* (*noble calamine*, *Smithsonite*, carbonate, and *earthy calamine*, *hydrozincite*, hydrated carbonate); *silicious oxide* (*willemite*, anhydrous, and *calamine*, hydrated silicate).

c. RULES OF PRACTICE.

In cases before the United States District Land Offices, the General Land Office, and the Department of the Interior. Approved December 20, 1880.

PROCEEDINGS BEFORE REGISTERS AND RECEIVERS.

I. CONTESTS AND HEARINGS.

1.—*Initiation of Contests.*

RULE 1.—Contests may be initiated by a party in interest, or by any other person, in the following cases:

1. Alleged abandoned homestead entries. (Revised Statutes, sec. 2297.)
2. Alleged abandoned or forfeited timber-culture entries. (20 Stat., 113, sec. 3.)

RULE 2.—In all other cases contests can be initiated only by a party in interest.

RULE 3.—In every case of application for a hearing an affidavit must be filed by the contestant with the Register and Receiver, fully setting forth the facts which constitute the grounds of contest.

RULE 4.—Where an entry has been allowed and remains of record, the affidavit of the contestant must be accompanied by the affidavits of one or more witnesses in support of the allegations made.

2.—*Hearings in Contested Cases.*

RULE 5.—Registers and Receivers may order hearings in the following cases, wherein entry has not been perfected and no certificate has been issued as a basis for patent, namely:

1. Contests between pre-emption claimants.
2. Contests between homestead and pre-emption claimants.
3. Contests to clear the record of abandoned homestead entries.
4. Contests to clear the record of abandoned or forfeited timber-culture entries.

RULE 6.—In case of an entry or location of record, on which final certificate has been issued, the hearing will be ordered only by direction of the Commissioner of the General Land Office.

RULE 7.—Applications for hearings under the preceding section must be transmitted by the Register and Receiver, with special report and recommendation, to the Commissioner for his determination and instructions.

3.—*Notice of Contest.*

RULE 8.—At least thirty days' notice shall be given of all hearings before the Register and Receiver, unless, by written consent, an earlier day shall be agreed upon.

RULE 9.—The notice of contest and hearing must conform to the following requirements:

1. It must be written or printed.
2. It must be signed by the Register and Receiver, or by one of them.
3. It must state the time and place of hearing.
4. It must describe the land involved.
5. It must state the Register and Receiver number of the entry, and the land office where, and the date when made, and the name of the party making the same.

6. It must give the name of the contestant, and briefly state the grounds and purpose of the contest.

7. It may contain any other information pertinent to the contest.

4.—*Service of Notice.*

RULE 10.—Personal service shall be made in all cases when possible, if the party to be served is resident in the State or Territory in which the land is situated, and shall consist in the delivery of a copy of the notice to each person to be served.

RULE 11.—Personal service may be executed by any officer or person.

RULE 12.—Notice may be given by publication alone, only when it is shown by affidavit of the contestant, and by such other evidence as the Register and Receiver may require, that personal service cannot be made.

5.—*Notice by Publication.*

RULE 13.—Notice by publication shall be made by advertising the notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and, if no newspaper be published in such county, then in the newspaper published in the county nearest to such land.

RULE 14.—Where notice is given by publication, a copy of the notice shall be mailed by registered letter to the last known address of each person to be notified, and a like copy shall be posted in a conspicuous place on the land during the period of publication for at least two weeks prior to the day set for hearing.

6.—*Proof of Service of Notice.*

RULE 15.—Proof of personal service shall be the written acknowledgment of the person served, or the affidavit of the person who served the notice attached thereto, stating the time, place, and manner of service.

RULE 16.—When service is by publication, the proof of service shall be a copy of the advertisement, with the affidavit of the publisher or foreman attached thereto, showing that the same was successively inserted the requisite number of times and the date thereof.

7.—*Notice of Interlocutory Proceedings.*

RULE 17.—Notice of interlocutory motions, proceedings, orders, and decisions, shall be in writing, and may be served personally or by registered letter through the mail.

RULE 18.—Proof of service by mail shall be the affidavit of the person who mailed the notice, attached to the post office receipt for the registered letter.

8.—*Rehearings.*

RULE 19.—Orders for rehearing must be brought to the notice of the parties in the same manner as in case of original proceedings.

9.—*Continuances.*

RULE 20.—A postponement of a hearing to a day to be fixed by the Register and Receiver may be allowed on the day of trial on account of the absence of material witnesses, when the party asking for the continuance makes an affidavit before the Register and Receiver showing—

1. That one or more of the witnesses in his behalf is absent without his procurement or consent;

2. The name and residence of each witness;

3. The facts to which they would testify if present;

4. The materiality of the evidence;

5. The exercise of proper diligence to procure the attendance of the absent witnesses; and

6. That affiant believes said witnesses can be had at the time to which it is sought to have the trial postponed.

RULE 21.—One continuance only shall be allowed to either party on account of absent witnesses; unless the party applying for a further continuance shall at the same time apply for an order to take the depositions of the alleged absent witnesses.

RULE 22.—No continuance shall be granted when the opposite party shall admit that the witnesses would, if present, testify to the statement set out in the application for continuance.

10.—*Depositions.*

RULE 23.—Testimony may be taken by deposition in the following cases:

1. Where the witness is unable, from age, infirmity, or sickness, or shall refuse, to attend the hearing at the local land-office.

2. Where the witness resides more than fifty miles from the place of trial, computing distance by the usually traveled route.

3. Where the witness resides out of, or is about to leave the State or Territory, or is absent therefrom.

4. Where, from any cause, it is apprehended that the witness may be unable or will refuse to attend; in which case the deposition will be used only in event that the personal attendance of the witness cannot be obtained.

RULE 24.—The party desiring to take a deposition under Rule 23 must comply with the following regulations:

1. He must make affidavit before the Register or Receiver setting forth one or more of the above-named causes for taking such deposition, and that the witness is material.

2. He must file with the Register and Receiver the interrogatories to be propounded to the witness.

3. He must state the name and residence of the witness.

4. He must serve a copy of the interrogatories on the opposing party, or his attorney.

RULE 25.—The opposing party will be allowed ten days in which to file cross-interrogatories.

RULE 26.—After the expiration of the ten days allowed for filing cross-interrogatories, a commission to take the deposition shall be issued by the Register and Receiver, which commission shall be accompanied by a copy of all the interrogatories filed.

RULE 27.—The Register and Receiver may designate any officer authorized to administer oaths within the county or district where the witness resides to take such deposition.

RULE 28.—It is the duty of the officer before whom the deposition is taken to cause the interrogatories appended to the commission to be written out, and the answers thereto to be inserted immediately under-

neath the respective questions; and the whole, when completed, is to be read over to the witness, and must be by him subscribed and sworn to in the usual manner.

RULE 29.—The officer must attach his certificate to the deposition, stating that the same was subscribed and sworn to by the deponent at the time and place therein mentioned.

RULE 30.—The deposition and certificate, together with the commission and interrogatories, must then be sealed up, the title of the cause indorsed on the envelope, and the whole returned by mail or express to the Register and Receiver.

RULE 31.—Upon receipt of the package at the local land-office, the date when the same is opened must be indorsed on the envelope and body of the deposition by the local land officers.

RULE 32.—If the officer designated to take the deposition has no official seal, a proper certificate of his official character, under seal, must accompany his return.

RULE 33.—The parties in any case may stipulate in writing to take depositions before any qualified officer, and in any manner.

RULE 34.—All stipulations by parties or counsel must be in writing, and be filed with the Register and Receiver.

RULE 35.—Registers and Receivers are not authorized to cite contestants before any officer other than themselves.

II.—*Trials.*

RULE 36.—Upon the trial of a cause the Register and Receiver may in any case, and should in all cases when necessary, personally direct the examination of witnesses, in order to draw from them all the facts within their knowledge requisite to a correct conclusion by the officers upon any point connected with the case.

RULE 37.—The Register and Receiver will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest.

RULE 38.—In pre-emption cases they will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming as pre-emptors; the steps taken to mark and secure the claim, and the exact status of the land at that date, as shown upon the records of their office.

RULE 39.—In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

RULE 40.—Due opportunity will be allowed opposing claimants to confront and cross-examine the witnesses introduced by either party.

RULE 41.—No testimony will be excluded from the record by the Register and Receiver on the ground of any objection thereto; but when objection is made to testimony offered, the exceptions will be noted, and the testimony, with the exceptions, will come up with the case for the consideration of the Commissioner.

RULE 42.—Upon the day originally set for hearing, and upon any day to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

12.—*Appeals.*

RULE 43.—Appeals from the action or decisions of Registers and Receivers lie in every case to the Commissioner of the General Land Office. (Revised Statutes, sections 453, 2478.)

RULE 44.—After hearing in a contested case has been had and closed, the Register and Receiver will notify the parties in interest of the conclusions to which they have arrived, and that thirty days are allowed for an appeal from their decision to the Commissioner.

RULE 45.—The appeal must be in writing or in print, and should set forth in brief and clear terms the specific points of exception to the ruling appealed from.

RULE 46.—No appeal from the action or decisions of the Register and Receiver will be received at the General Land Office unless forwarded through the local officers.

RULE 47.—A failure to appeal from the decision of the local officers will be considered final as to the facts in the case, and will be disturbed by the Commissioner only as follows:

1. Where fraud or gross irregularity is suggested on the face of the papers.
2. Where the decision is contrary to existing laws or regulations.
3. In event of disagreeing decisions by the local officers.
4. Where it is not shown that the party against whom the decision was rendered was duly notified of the decision and of his right of appeal.

RULE 48.—In any of the foregoing cases, the Commissioner will reverse or modify the decision of the local officers, or remand the case at his discretion.

RULE 49.—All documents once received by the local officers must be kept on file with the cases, and the date of filing must be noted thereon; and no papers will be allowed under any circumstances to be removed from the files or taken from the custody of the Register and Receiver; but access to the same under proper rules, so as not to interfere with necessary public business, will be permitted to the parties in interest, or their attorneys, under the supervision of those officers.

13.—*Reports and Opinions.*

RULE 50.—Upon the termination of a contest, the Register and Receiver will render a joint report and opinion in the case, making full and specific references to the postings and annotations upon their records.

RULE 51.—In order that all parties to a contest may have full opportunity to examine the record and prepare their arguments upon the questions at issue, the report of the Register and Receiver in such cases will not be forwarded until the expiration of the thirty days named in the notice for appeal, unless all parties request its earlier transmission.

RULE 52.—The Register and Receiver will forward their report, together with the testimony and all the papers in the case, to the Commissioner of the General Land Office, with a brief letter of transmittal, describing the case by its title, the nature of the contest, and the tract involved.

RULE 53.—The local officers will thereafter take no further action

affecting the disposal of the land in contest until instructed by the Commissioner.

14.—*Taxation of Costs.*

RULE 54.—Applicants for contest must deposit with the Register and Receiver a sufficient sum of money to defray the cost of the proceedings.

RULE 55.—Registers and Receivers are not required to make advances from their own funds, nor to incur individual liabilities, for the expense of hearings.

RULE 56.—When testimony is taken by deposition, the party in whose behalf the same is taken must pay the costs thereof.

RULE 57.—Parties contesting the validity of homestead and timber-culture entries must pay the costs of the contest.

RULE 58.—In other contested cases, the costs may be equitably apportioned between the parties by the Register and Receiver.

RULE 59.—Only the actual costs of notice, and the legal fees for reducing testimony to writing, or for acting on mineral land applications and protests, can be charged to the parties. (Revised Statutes, sec. 2238.)

RULE 60.—Costs of notice will include the costs of all notices up to the final determination of the case.

RULE 61.—Upon the final disposal of a case, any excess in the sum deposited as security over the amount chargeable to the party making the deposit, will be returned to him by the Register and Receiver.

RULE 62.—When hearings are ordered by the Commissioner or by the Secretary of the Interior, upon the discovery of reasons for suspension in the usual course of examination of entries, the preliminary costs will be provided from the contingent fund for the expenses of local land offices.

RULE 63.—The preliminary costs provided for by the preceding section will be collected by the Register and Receiver when the parties are brought before them in obedience to the order of hearing.

RULE 64.—The Register and Receiver will then require proper provision to be made for such further notification as may become necessary in the usual progress of the case to final decision.

RULE 65.—The Register and Receiver will append to their report in each case a statement of costs and the amount actually paid by each of the contestants, and also a statement of the amount deposited to secure the payment of the costs, how said sum was apportioned, and the amount returned, if any, and to whom.

II. APPEALS FROM DECISIONS REJECTING APPLICATIONS TO ENTER PUBLIC LANDS.

RULE 66.—For the purpose of enabling appeals to be taken from the rulings or action of the local officers relative to applications to file upon, enter, or locate the public lands, the following rules will be observed:

1. The Register and Receiver will indorse upon every rejected application the date when presented, and their reasons for rejecting it.

2. They will promptly advise the party in interest of their action, and of his right of appeal to the Commissioner.

3. They will note upon their records a memorandum of the transaction.

RULE 67.—The party aggrieved will be allowed thirty days from receipt of notice in which to file his appeal in the local land office.

RULE 68.—The Register and Receiver will promptly forward the appeal to the General Land Office, together with a full report upon the case.

RULE 69.—This report should recite all the facts and the proceedings had, and must embrace the following particulars:

1. A statement of the application and rejection, with the reasons for the rejection.

2. A description of the tract involved, and a statement of its status as shown by the records of the local land office.

3. References to all entries, filings, annotations, memoranda, and correspondence shown by the record relating to said tract, and to the proceedings had.

RULE 70. Rules 43 to 48, inclusive, are applicable to all appeals from the decisions of Registers and Receivers.

PROCEEDINGS BEFORE SURVEYORS-GENERAL.

RULE 71.—The proceedings in hearings and contests before Surveyors-General shall, as to notices, depositions, and other matters, be governed, as nearly as may be, by the rules prescribed for proceedings before Registers and Receivers, unless otherwise provided by law.

PROCEEDINGS BEFORE THE COMMISSIONER OF THE GENERAL LAND OFFICE AND SECRETARY OF THE INTERIOR.

RULE 72.—When a contest has been closed before the local land officers, and their report forwarded to the General Land Office, no additional evidence will be admitted in the case unless offered under stipulation of the parties to the record, except where such evidence is presented as the basis of a motion for a new trial or in support of a mineral application or protest; but this rule will not prevent the Commissioner, in the exercise of his discretion, from ordering further investigation when necessary.

RULE 73.—After the Commissioner shall have received a record of testimony in a contested case, thirty days will be allowed to expire before any action thereon is taken, unless, in the judgment of the Commissioner, public policy or private necessity shall demand summary action, in which case he will proceed at his discretion, first notifying the attorneys of record of his proposed action.

RULE 74.—When a case is pending on appeal from the decision of the Register and Receiver, or Surveyor-General, and argument is not filed before the same is reached in its order for examination, the argument will be considered closed, and thereafter no further arguments or motions of any kind will be entertained except upon written stipulation duly filed, or good cause shown to the Commissioner.

RULE 75.—If, before decision by the Commissioner, either party should desire to discuss a case orally, reasonable opportunity therefor will be given in the discretion of the Commissioner, but only at a time to be fixed by him upon notice to the opposing counsel, stating time, and specific points upon which discussion is desired; and, ex-

cept as herein provided, no oral hearings or suggestions will be allowed.

REHEARINGS AND REVIEWS.

RULE 76.—Motions for rehearings before Registers and Receivers, or for review or reconsideration of the decisions of the Commissioner or Secretary, will be allowed in accordance with legal principles applicable to motions for new trials at law, after due notice to the opposing party.

RULE 77.—Motions for rehearings and reviews must be filed in the office wherein the decision to be affected by such rehearing or review was made, or in the local land office for transmittal to the General Land Office, and, except when based upon newly-discovered evidence, must be filed within thirty days from notice of such decision.

RULE 78.—Motions for rehearings and reviews must be accompanied by an affidavit of the party, or his attorney, that the motion is made in good faith, and not for the purpose of delay.

RULE 79.—The time between the filing of a motion for rehearing or review and the notice of the decision upon such motion, shall be excluded in computing the time allowed for appeal.

RULE 80.—No officer shall entertain a motion in a case after an appeal from his decision has been taken.

APPEALS FROM THE COMMISSIONER TO THE SECRETARY.

RULE 81.—An appeal may be taken from the decision of the Commissioner of the General Land Office to the Secretary of the Interior, upon any question relating to the disposal of the public lands, and to private land claims, except in case of interlocutory orders and decisions, and orders for hearing or other matter resting in the discretion of the Commissioner. Decisions and orders forming the above exception will be noted in the record, and will be considered by the Secretary on review, in case an appeal upon the merits be finally allowed.

RULE 82.—When the Commissioner considers an appeal defective he will notify the party of the defect, and if not amended within fifteen days from the date of the service of such notice, the appeal will be dismissed and the case closed.

RULE 83.—In proceedings before the Commissioner in which he shall formally decide that a party has no right of appeal to the Secretary, the party against whom such decision is rendered may apply to the Secretary for an order directing the Commissioner to certify said proceedings to the Secretary, and to suspend further action until the Secretary shall pass upon the same.

RULE 84.—Applications to the Secretary under the preceding rule, shall be made in writing, under oath, and shall fully and specifically set forth the grounds upon which the application is made.

RULE 85.—When the Commissioner shall formally decide against the right of an appeal, he shall suspend action on the case at issue for twenty days from service of notice of his decision, to enable the party against whom the decision is rendered to apply to the Secretary for an order, in accordance with rules 83 and 84.

RULE 86.—Notice of an appeal from the Commissioner's decision must be filed in the General Land Office, and served on the appellee

or his counsel, within sixty days from the date of the service of notice of such decision.

RULE 87.—When notice of the decision is given through the mails by the Register and Receiver, or Surveyor-General, five days additional will be allowed by those officers for the transmission of the letter, and five days for the return of the appeal through the same channel, before reporting to the General Land Office.

RULE 88.—Within the time allowed for giving notice of appeal, the appellant shall also file in the General Land Office a specification of errors, which specification shall clearly and concisely designate the errors of which he complains.

RULE 89.—He may also, within the same time, file a written argument, with citation of authorities, in support of his appeal.

RULE 90.—A failure to file a specification of errors within the time required will be treated as a waiver of the right of appeal, and the case will be considered closed.

RULE 91.—The appellee shall be allowed thirty days from the expiration of the sixty days allowed for appeal in which to file his argument.

RULE 92.—The appellant shall be allowed thirty days from service of argument of appellee in which to file argument strictly in reply; and no other or further arguments or motions of any kind shall be filed without permission of the Commissioner or Secretary and notice to the opposite party.

RULE 93.—A copy of the notice of appeal, specification of errors, and all arguments of either party, shall be served on the opposite party within the time allowed for filing the same.

RULE 94.—Such service shall be made personally or by registered letter.

RULE 95.—Proof of personal service shall be the written acknowledgment of the party served, or the affidavit of the person making the service attached to the papers served, and stating time, place, and manner of service.

RULE 96.—Proof of service by registered letter shall be the affidavit of the person mailing the letter attached to a copy of the post office receipt.

RULE 97.—Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notices and papers by mail, except in case of notice to resident attorneys, when one day will be allowed.

RULE 98.—Notice of interlocutory motions and proceedings before the Commissioner and Secretary shall be served personally or by registered letter, and service proved as provided in rules 94 and 95.

RULE 99.—No motion affecting the merits of a case or the regular order of proceedings will be entertained, except on due proof of service of notice.

RULE 100.—Ex-parte cases and cases in which the adverse party does not appear will be governed by the foregoing rules as to notices of decisions, time for appeal, and filing of exceptions and arguments, as far as applicable. In such cases, however, the right to file additional evidence at any stage of the proceedings to cure defects in the proof or record will be allowed.

RULE 101.—No person hereafter appearing as a party or attorney in any case shall be entitled to a notice of the proceedings who does not

at the time of his appearance file in the office in which the case is pending a statement in writing, giving his name and post office address, and the name of the party whom he represents; nor shall any person who has heretofore appeared in a case be entitled to a notice unless within fifteen days after being requested to file such statement he shall comply with said requirement.

RULE 102.—No person, not a party to the record, shall intervene in a case without first disclosing on oath the nature of his interest.

RULE 103.—When the Commissioner makes an order or decision affecting the merits of a case or the regular order of proceedings therein, he will cause notice to be given to each party in interest whose address is known.

ATTORNEYS.

RULE 104.—In all cases, contested or ex parte, where the parties in interest are represented by attorneys, such attorneys will be recognized as fully controlling the cases of their respective clients.

RULE 105.—All notices will be served upon the attorneys of record.

RULE 106.—Notice to one attorney in a case shall constitute notice to all counsel appearing for the party represented by him; and notice to the attorney will be deemed notice to the party in interest.

RULE 107.—All attorneys practicing before the General Land Office and Department of the Interior, must first file the oath of office prescribed by section 3478 United States Revised Statutes.

RULE 108.—In the examination of any case, whether contested or ex parte, and for the preparation of arguments, the attorneys employed, when in good standing in the department, will be allowed full opportunity to consult the record of the case and to examine the abstracts, plats, field-notes, and tract-books, and the correspondence of the General Land Office, or of the department relative thereto, and to make verbal inquiries of the various chiefs of divisions at their respective desks in respect to the papers or status of said case; but such personal inquiries will be made of no other clerk in the division except in the presence or with the consent of the head thereof, and will be restricted to the hours between 11 a. m. and 2 p. m.

RULE 109.—Any attorney detected in any abuse of the above privileges, or of gross misconduct, upon satisfactory proof thereof, after due notice and hearing, shall be prohibited from further practicing before the department.

RULE 110.—Should either party desire to discuss a case orally before the Secretary, opportunity will be afforded at the discretion of the department, but only at a time specified by the Secretary, or fixed by stipulation of the parties, with the consent of the Secretary; and in the absence of such stipulation, on written notice to opposing counsel, with like consent, specifying the time when argument will be heard.

RULE 111.—The examination of cases on appeal to the Commissioner or Secretary will be facilitated by filing in printed form such arguments as it is desired to have considered.

DECISIONS.

RULE 112.—Decisions of the Commissioner not appealed from within the period prescribed become final, and the case will be regularly closed. (Revised Statutes, sec. 2273.)

RULE 113.—The decision of the Secretary, so far as respects the action of the executive, is final.

RULE 114.—The preceding rules shall take effect on the 1st day of February, 1881.

None of the foregoing rules shall be construed to deprive the Secretary of the Interior of the exercise of the directory and supervisory powers conferred upon him by law.

d. HOW TO EXAMINE TITLE.*

The written title to a mining claim begins with the location certificate, after which the conveyances and encumbrances should appear upon the abstract as in other classes of real estate.

In addition to the abstract of title, a survey and local inspection are indispensable to security.

The abstract (at least until patent) may show a clear chain of title, but such abstract may be based on a location or a record prior to other locations on the same vein, and the title be absolutely worthless. An adverse discovery may exist within a few feet of the discovery of the claim under examination. Every hole or stake in proximity to the claim should be examined, its history traced, and the possibility of danger from that source guarded against.

Whether the annual labor has been done must also be ascertained.

Such inspection having been made, and the points peculiar to the title, as a mining title, being examined as they occur, the course of examination will be as follows:

The Abstract.—The abstract should be certified by the Recorder, or by some respectable abstract firm, to contain all deeds and instruments filed or recorded, in the office of the recorder, conveying, encumbering, or in any manner affecting title to the property in question.

The abstract, however, amounts to nothing more than a guide or memorandum to the attorney in his examination.

Each deed and other instrument must be inspected at length, either by the original or by a certified copy.

Location Certificate.—The material points to be observed in the location certificate are that (especially since May 10, 1872,) it contains:

1. The names of locators.
2. The date of location.
3. Such a description as will identify the claim.
4. That it claims no greater number of feet than was allowed at date of discovery.
5. That it show a sufficient number of locators to claim the full number of feet.

Conveyance.—A mine is conveyed by deed or encumbered by mortgage the same as other real estate.

The description should contain:

1. The name of the lode.
2. The number of feet and their position relative to the discovery shaft.
3. The slope and name of the mountain or gulch.
4. If patented, the number of the survey lot.
5. Mining district, county and Territory.
6. Proper recitals of previous conveyances, especially the patent.

The essential points of such description are the name of the lode, district, county and Territory.

Placer claims are usually described by their numbers, or if patented, by the survey lines or number of the survey lot.

After the special description, the usual formula of printed deeds may be sufficient; but a deed technically drawn and intended to convey lode mining premises, will proceed,—"Together with all and singular the dips, spurs, variations, angles and feeders of said lode, and all veins, deposits, mines and minerals, within the lines of said claim, with the improvements, drifts, shafts, adits, ways, water-courses, timber, easements, rights, privileges and appurtenances thereunto in anywise belonging."

Each deed or instrument must be examined to ascertain:—

That it has been signed by the proper parties

* From Morrison's Mining Rights in Colorado.

That it is under seal.

That it sets forth a consideration.

That it contains a sufficient description of the premises.

That it contains sufficient words of conveyance.

That no lien of purchase money is therein reserved.

That there are no words of condition, qualification or reservation, by which a less than a fee simple estate may be limited, or by which a supposed conveyance may be construed as a mortgage.

That each letter of attorney grants sufficient power to sell and convey.

That each deed under power of attorney is executed in conformity with such power, and that the name of the principal, at least, appears in the body of the deed, and that it is signed "A. B. by C. D., his attorney in fact," or words equivalent thereto.

That each title bond or agreement to convey has been released, or else a conveyance made in conformity with such bond or agreement.

That every mortgage, trust deed, attachment, mechanic's lien, certificate of levy, tax sale, judicial sale, judgment, transcript, has been either properly proceeded upon if title is claimed under it; or, on the other hand, released if it is found in opposition to a clear title.

That especially in sales under a trust deed, due publication has been made, and all the terms of such trust deed complied with as to time, place and terms of sale, etc., all of which should appear recited in the deed made by the trustee to the purchaser.

That every letter of attorney, deed, mortgage, etc., has been duly acknowledged before some proper officer; and especially that prior to February 12, 1874, each acknowledgment by a married woman has been "separate and apart from and out of the presence of" her husband, and that the "contents, meaning and effect" of the deed were by the officer "fully explained to her."

A warranty deed conveys to the grantee any after acquired title in his grantor, and even a quit-claim made between the application and the issue of patent is presumed to carry the patented title to the grantee.

Patents.—In case of a patented claim, the land office receipt and patent should appear on the abstract. If there is a receipt but no patent, the title is still possessory. If there is a patent, it carries the legal title back *at least* to the entry, if not to the date of application.

The form of patent is quite different from that of a patent for agricultural lands, and contains certain provisions as to easements, etc., and also a plan of the survey and the surface ground of any previous survey crossing the line of the lot conveyed. It also excepts the "claim" of the party who has entered the interfering lot.

In case of overlapping surveys, too much care cannot be exercised in observing to what extent they may cover the vein of the lode. Even if they do not *cover* the vein, it remains an undecided question as to whether the vein is not conveyed, independently of the fact of its apex lying within the surface lines. The question of priority then becomes important. A junior patent upon a senior entry is certainly superior to a senior patent with a junior entry; that the patent even relates back to the date of the application, is the general opinion of the profession. The idea that it may relate back to the discovery is scarcely tenable, but in any event it is essential to examine behind the patent, back to the discovery or the first record, on account of the possibility of liens, which are not divested by the patent.

Certificate of Clerk of District Court.—A certificate should then be had and attached to the abstract, from the Clerk of the District Court of the proper county, certifying that there are no judgments, transcripts, attachments, or other liens of record in such court against the property or appearing against the names of any of the present or former owners, during such time as the abstract may show it was liable to lien through each particular owner, and that there are no suits pending affecting such property or the title thereto, either in such District Court or in Supreme Court, on error or appeal. If there are suits or liens, he will so certify, with reference to term and docket, whereupon they should be examined, by inspection of the original records with the same particularity as the deeds in the abstract, so that it may be seen to what extent they encumber the premises or threaten the quiet enjoyment thereof; and if such suits or liens have been satisfied or settled, it should be made plainly so to appear upon the records.

The time above mentioned, during which a judgment may intervene against any particular owner, may be calculated *from the last day of the term of court prior to a date seven years before the date of the examination, forwards until the record of the deed by which each particular owner parted with his interest.*

It seems that since February 8, 1872 (1872, page 112), no judgment becomes a lien until date of filing transcript in the office of the recorder, and when so filed should appear in the abstract; but this will not apply to judgments previously obtained, nor to transcripts.

Certificate of Probate Judge.—The Probate Judge certifies to the same points as in the certificate of the Clerk of the District Court; and further as to any will or intestate proceedings, if any, of record in his court, whereupon the same should be examined as to the terms of any such will, and whether any lien or debt of decedent, or legacy, may exist, and whether there has been any sale by executor or administrator.

Examination of Records of Court.—If from the abstract, or any of the above certificates, there appears to have been a judicial sale, probate sale, tax or other official sale, the whole proceedings, from the summons, petition, assessment, or other starting point, must be examined as to their validity at all stages, up to their consummation by sheriff's deed or otherwise.

Other Liens.—There may still exist a lien in the Supreme Court, either in a bankruptcy case or upon the ordinary proceedings in that court, but the precaution of a certificate from the clerk is not usually required. There may be also a lien in favor of the Territory, on an account audited in its favor (R. S. p. 79, sec. 6), or for fine and costs in a criminal case against either a defendant or the surety on his bond for fine and costs (R. S. pages 244 and 245, secs. 220 and 221), or a miners' or mechanics' lien.

Taxes.—Tax sales should appear on the abstract; recent taxes in the treasurer's office. The statutory time for redemption from tax sale is two years from date of sale, or any time before execution of the tax deed. Redemption money must include the amount bid at sale, fifty per cent. additional, and twenty-five per cent. annual interest; also all subsequent taxes paid by the purchaser, with twenty-five per cent. annual interest. (1870, p. 114.)

Where there is no agreement between grantor and grantee as to recent taxes, and the deed is made before May 1, the grantee is liable; if made at a later date in the year than May 1, the grantor should pay them. This is only, however, the law as between grantor and grantee, for in any event if not paid they follow the land. (1870, p. 123.)

Parties in Possession.—If parties are in actual possession, claiming adverse to the party intending to convey, or claiming under him as lessees, their possession is an assertion of their claim, whatever it may be, of which the purchaser must take notice at his peril.

Conclusion.—If from the abstract, or from any of the certificates, or from inspection of any deed, instrument or record in the chain of title; or as the result of his client's inspection and survey of the premises; or from any other source, the attorney is informed of any adverse title, or any outstanding trust or adverse interest, or of any missing conveyance in the chain of title, or of any serious defect in the body or acknowledgment of any instrument, of such nature as to invalidate the title, the true condition of such title should then, with due secrecy, be expressed to the client. And when the attorney has satisfied his own mind upon all such questions of law as may have arisen during the course of his examination, the client has a right to be advised of all points which remain in doubt, and of any contingencies which may threaten the quiet enjoyment or would obstruct a sale of the premises; and of all steps which if presently taken, may avoid such conditions and perfect the title, so that the true value of the title in law shall be represented to the client; that is, the intending purchaser. For in all cases of examination of title, the attorney should be selected, or at least assented to, by the purchaser, if it be a sale; by the lender of money, if it be a mortgage; because, from the necessity of the case, he acts in the interest of the purchaser and of the lender, and not in that of the grantor or mortgagor; the charge for his examination should be made against the same side; the charge for the conveyance, on the other hand, is by custom made against the vendor.

e. PUBLIC LAND COMMISSION'S CODIFICATION. EXTRACT RELATING TO MINERAL LANDS.

CHAPTER THIRTEEN. MINERAL LANDS.

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SEC. 386. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

14 Stat. 86; 18 *id.* 476; R. S. 2318. U. S. *vs.* Gear, 3 How. 120; Cooper *vs.* Roberts, 18 *id.* 73; U. S. *vs.* Gratiot, 14 Pet. 526; Sparrow *vs.* Strong, 3 Wall. 97; Secretary *vs.* McGarrahan, 9 *id.* 298; Morton *vs.* Nebraska, 21 *id.* 660; *Copp's Mineral Lands*, 38. Heydenfeldt *vs.* Mining Co., 3 Otto, 634; *Copp's Mineral Lands*, 37. U. S. *vs.* Parrott, 1 McAllister, C. C. 272; U. S. *vs.* Gratiot, 1 McLean, C. C. 454; Indiana *vs.* Miller, 3 *id.* 151. 3 Op. Att. Gen. 277; 5 *id.* 247; 7 *id.* 636; 10 *id.* 184. Heydenfeldt *vs.* Mining Co., 10 Nev. 290; Gold Hill Co. *vs.* Ish, 5 Oreg. 104; *Copp's Mineral Lands*, 365; Hicks *vs.* Bell, 3 Cal. 219; Stoakes *vs.* Barrett, 5 *id.* 36; People *vs.* Folsom, 5 *id.* 373; Conger *vs.* Weaver, 6 *id.* 548; Nims *vs.* Johnson, 7 *id.* 111; Boggs *vs.* Merced Mining Co., 14 *id.* 279; Burage *vs.* Smith, 14 *id.* 380; Moore *vs.* Smaw, 17 *id.* 199; Lentz *vs.* Victor, 17 *id.* 272; Fremont *vs.* Seals, 18 *id.* 433; Rogers *vs.* Sogg, 22 *id.* 444; Rupley *vs.* Welch, 23 *id.* 452; Doran *vs.* Railway Co., 24 *id.* 245; Wixon *vs.* Bear River Co., 24 *id.* 367; Ah Yew *vs.* Choate, 24 *id.* 562; Higgins *vs.* Houghton, 25 *id.* 252; Morton *vs.* Solambo Mining Co., 26 *id.* 527; Alford *vs.* Barnum, 45 *id.* 482; McLaughlin *vs.* Powell, 50 *id.* 64; Titcomb *vs.* Kirk, 51 *id.* 288. Decisions Sec. Int., *Copp's Mineral Lands* 250; *Id.* 281; Decisions Com. G. L. O., Copp's Mg. Dec. 308; *Copp's Mineral Lands* 155; *Id.* 277. Cir. G. L. O., April 22, 1880. *Copp's Mineral Lands* 66.

SEC. 387. All valuable mineral deposits in lands belonging to the

United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs and rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

17 Stat. 91; 19 *id.* 52; R. S. 2319. Cooper *vs* Roberts, 18 How. 173; Sparrow *vs.* Strong, 3 Wall. 97; Heydenfeldt *vs.* Mg. Co., 3 Otto 634; *Copp's Mineral Lands* 376; Forbes *vs.* Gracey, 4 *id.* 762; *Copp's Mineral Lands* 386. U. S. *vs.* Parrott, 1 McAllister, C. C. 271; Chapman *vs.* Toy Long, 4 Saw. C. C. 28; Mt. Diablo Mg. Co. *vs.* Callison, 5 Saw. C. C. 439; Stroud *vs.* Railway Co., 4 Dillon C. C. 396; *4 Copp's Land Owner* 170. Hibschle *vs.* Gildersleeve, U. S. Dist. Ct. Col. 1880, in manuscript. 14 Op. Att. Gen. 115; *id.* Aug. 6, 1875, in manuscript. Rogers *vs.* Cooney, 7 Nev. 213; Golden Fleece Co. *vs.* Cable Mg. Co., 12 *id.* 312; Territory *vs.* Lee, 2 Montana, 124; Gold Hill Co. *vs.* Ish, 5 Oreg. 104; *Copp's Mineral Lands* 365; Hicks *vs.* Bell, 3 Cal. 219; Stoakes *vs.* Barrett, 5 *id.* 36; Tartar *vs.* Spring Creek Co., 5 *id.* 395; Bridge *vs.* Underwood, 6 *id.* 45; Mitchell *vs.* Hargood, 6 *id.* 148; Conger *vs.* Weaver, 6 *id.* 548; Crandall *vs.* Woods, 8 *id.* 136; Weimer *vs.* Lowrey, 11 *id.* 104; Boggs *vs.* Merced Mg. Co., 14 *id.* 279; Henshaw *vs.* Clark, 14 *id.* 461; Clark *vs.* Duval, 15 *id.* 85; Smith *vs.* Doe, 15 *id.* 100; Moore *vs.* Smaw, 17 *id.* 199; Lentz *vs.* Victor, 17 *id.* 272; Fremont *vs.* Seals, 18 *id.* 433; Logan *vs.* Driscoll, 19 *id.* 623; Rupley *vs.* Welch, 23 *id.* 452; Ensminger *vs.* McIntire, 23 *id.* 593; Doran *vs.* Railway Co., 24 *id.* 245; Richardson *vs.* McNulty, 24 *id.* 339; Wixon *vs.* Bear River Co., 24 *id.* 367; Ah Yew *vs.* Choate, 24 *id.* 562; Higgins *vs.* Houghton, 25 *id.* 252; Morton *vs.* Solambo Mg. Co., 26 *id.* 527; Gibson *vs.* Puchta, 33 *id.* 310; Levaroni *vs.* Miller, 34 *id.* 231; Alford *vs.* Barnum, 45 *id.* 482; McLaughlin *vs.* Powell, 50 *id.* 64; Laird *vs.* Waterford, 50 *id.* 315; Titcomb *vs.* Kirk, 51 *id.* 288. Decisions Sec. Int., Aug. 26, 1871, *Copp's Mineral Lands* 89; Sept. 3, 1872, *id.* 118; Jan. 2, 1875, *id.* 172. Decisions Com. G. L. O., June 7, 1871, *id.* 86; July 10, 1873, *id.* 142; July 15, 1873, *id.* 61; Nov. 18, 1873, *id.* 146; May 2, 1874, *id.* 152; Oct. 23, 1874, *id.* 161; Jan. 30, 1875, *id.* 179; June 28, 1875, *id.* 194; Dec. 3, 1875, *id.* 201; April 24, 1876, *id.* 206; Nov. 13, 1877, *id.* 238; Sept. 30, 1879, *id.* 277.

SEC. 388. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

17 Stat. 91; 19 *id.* 52; R. S. 2320. Flagstaff Silver Mg. Co. *vs.* Tarbet, 8 Otto 463; *Copp's Mineral Lands* 335. The Eureka case, 4 Saw. C. C. 302; *Copp's Mineral Lands*, 340; Mt. Diablo Mg. Co. *vs.* Callison, 5 *id.* 439. Mallett *vs.* Uncle Sam Co., 1 Nev. 188; State *vs.* Rhodes, 4 *id.* 312; Foot *vs.* National Mg. Co., 2 Montana, 402; Moxon *vs.* Wilkinson, 2 *id.* 421; Prosser *vs.* Parks, 18 Cal. 47; Logan *vs.* Driscoll, 19 *id.* 623; Tunnel Co. *vs.* Stranahan, 31 *id.* 387; Correa *vs.* Frietas, 42 *id.* 339; Harvey *vs.* Bryan, 42 *id.* 626; Titcomb *vs.* Kirk, 51 *id.* 288. Decision Sec. Int.,

Aug. 26, 1874, *Copp's Mineral Lands* 159. Decisions Com. G. L. O., Nov. 6, 1869, *Copp's Mg. Dec.* 23; Sept. 22, 1870, *Copp's Mineral Lands* 83; Aug. 4, 1871, *Copp's Mg. Dec.* 57; Aug. 25, 1871, *Copp's Mineral Lands* 89; March 19, 1873, *Copp's Mg. Dec.* 164; May 1, 1873, *Copp's Mineral Lands* 136; May 20, 1873, *Copp's Mg. Dec.* 201; June 17, 1873, *Copp's Mineral Lands* 140; July 10, 1873, *id.* 142; Nov. 18, 1873, *id.* 146; Feb. 11, 1875 1 *Copp's L. O.* 179; Dec. 29, 1875, 2 *id.* 146; Aug. 28, 1876, *Copp's Mineral Lands* 213; May 4, 1880, *id.* 292.

SEC. 389. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any state or territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

17 Stat. 94; 19 *id.* 52; R. S. 2321. Craig *vs.* Bradford, 3 Wheat. 594; Governeur's heirs *vs.* Robertson, 11 *id.* 332; Cross *vs.* De Valle, 1 Wall. 1; Osterman *vs.* Baldwin, 6 *id.* 116; Phillips *vs.* Moore, 10 Otto 208. 5 Op. Att. Gen. 551; *id.* Aug. 6, 1875, in manuscript. Jackson *vs.* Beech, Johnson's Cases 401. Decisions Sec. Int., Jan. 2, 1875, *Copp's Mineral Lands* 172; April 1, 1875, *id.* 181; July 29, 1876, *id.* 212; July 26, 1879, G. L. O. Rep. 1879, p. 157. Decisions Com. G. L. O., June 7, 1871, *Copp's Mineral Lands* 86; Aug. 13, 1872, *id.* 118; Sept. 7, 1874, 1 *Copp's L. O.* 98; Oct. 28, 1875, *Copp's Mineral Lands* 199; April 14, 1876, G. L. O. Rep. 1877, p. 83; July 18, 1876, *Copp's Mineral Lands* 211.

SEC. 390. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state, territorial and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another. No possessory action between individuals, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land on which such mines are, is in the United States, but each case shall be adjudged by the law of possession.

13 Stat. 441; 17 *id.* 91; 19 *id.* 52; R. S. 910, 2322. Sparrow *vs.* Strong, 3 Wall. 97; Heydenfeldt *vs.* Mining Co., 3 Otto 634, *Copp's Mineral Lands* 376; Forbes *vs.* Gracey, 4 *id.* 762, *Copp's Mineral Lands* 386; Jennison *vs.* Kirk, 8 *id.* 453, *Copp's Mineral Lands* 389; Flagstaff Silver Mg. Co. *vs.* Tarbet, 8 *id.* 463. The 420 Mg.

Co. *vs.* The Bullion Co., 3 Saw. C. C. 634; The Eureka Case, 4 *id.* 302, *Copp's Mineral Lands* 340; Chapman *vs.* Toy Long, 4 *id.* 28; Kinney *vs.* Con. Va. Mg. Co., 4 *id.* 382; Mt. Diablo Mg. Co. *vs.* Callison, 5 *id.* 439; Hibschle *vs.* Gildersleeve, U. S. Dist. Ct. Colo. 1880, in manuscript. Hale *et al. vs.* Story Co., 1 Nev. 104; People *vs.* Logan, 1 *id.* 109; Leet *vs.* John Dare Mg. Co., 6 *id.* 218; Overman Co. *vs.* American Mg. Co , 7 *id.* 312; Golden Fleece Co. *vs.* Cable Co., 12 *id.* 312; Lincoln *vs.* Rogers, 1 Montana 217; Nelson *vs.* O'Neil, 1 *id.* 284; Bucher *vs.* Mulverhill, 1 *id.* 306; Robertson *vs.* Smith, 1 *id.* 410; Atkins *vs.* Hendree, 1 Idaho, 107; Gold Hill Mg. Co. *vs.* Ish, 5 Oreg. 104, *Copp's Mineral Lands* 365; Patterson *vs.* Hitchcock, 3 Colo. 533; Wolfley *vs.* Lebanon Mg. Co., 4 *id.* 112; Fitzgerald *vs.* Urton, 5 Cal. 308; Bridge *vs.* Underwood, 6 *id.* 215; Mitchell *vs.* Hargood, 6 *id.* 148; Sims *vs.* Smith, 7 *id.* 149; Merced Mg. Co. *vs.* Fremont, 7 *id.* 317; O'Keiff *vs.* Cunningham, 9 *id.* 589; State *vs.* Moore, 12 *id.* 56; Merritt *vs.* Judd, 14 *id.* 60; Boggs *vs.* Merced Mg. Co., 14 *id.* 279; Henshaw *vs.* Clark, 14 *id.* 461; Clark *vs.* Duval, 15 *id.* 85; Smith *vs.* Doe, 15 *id.* 100; Pennsylvania Mg. Co. *vs.* Owens, 15 *id.* 135; Esmond *vs.* Chew, 15 *id.* 137; Brown *vs.* 49 and 56 Co., 15 *id.* 152; Gillan *vs.* Hutchinson, 16 *id.* 154; Coryell *vs.* Cain, 16 *id.* 567; Attwood *vs.* Fricot, 17 *id.* 38; English *vs.* Johnson, 17 *id.* 108; Fremont *vs.* Seals, 18 *id.* 433; Gore *vs.* McBrayer, 18 *id.* 582; Logan *vs.* Driscoll, 19 *id.* 623; Tunnel Co. *vs.* Stranahan, 20 *id.* 198; Rogers *vs.* Soggs, 22 *id.* 444; Gatewood *vs.* McLaughlin, 23 *id.* 178; Hughes *vs.* Devlin, 23 *id.* 501; Ensminger *vs.* McIntire, 23 *id.* 593; Doran *vs.* Railway Co., 24 *id.* 245; Richardson *vs.* McNulty, 24 *id.* 339; Wixon *vs.* Bear River Co., 24 *id.* 367; Higgins *vs.* Houghton, 25 *id.* 252; St. John *vs.* Kidd, 26 *id.* 264; Depuy *vs.* Williams, 26 *id.* 309; Morton *vs.* Solambo Mg. Co., 26 *id.* 527; Hess *vs.* Winder, 30 *id.* 349; Tunnel Co. *vs.* Stranahan, 31 *id.* 387; Hardenburgh *vs.* Bacon, 33 *id.* 356; Gibson *vs.* Puchta, 33 *id.* 310; Levaroni *vs.* Miller, 34 *id.* 231; Hess *vs.* Winder, 34 *id.* 270; Pralus *vs.* Jefferson Mg. Co., 34 *id.* 559; Pralus *vs.* Pacific Mg. Co., 35 *id.* 30; Clark *vs.* Willett, 35 *id.* 535; Maine Boys Co. *vs.* Boston Co., 37 *id.* 40; Bradley *vs.* Lee, 38 *id.* 362; Correa *vs.* Frietas, 42 *id.* 339; Harvey *vs.* Bryan, 42 *id.* 626; Gregory *vs.* Harris, 43 *id.* 38; Stone *vs.* Bumpus, 46 *id.* 218; Quirk *vs.* Tralk, 47 *id.* 453; Laird *vs.* Waterford, 50 *id.* 315; Titcomb *vs.* Kirk, 51 *id.* 288; Phœnix Co. *vs.* Lawrence, S. C. Cal. 1880, in manuscript. Decisions Com. G. L. O., Sept. 28, 1878, *Copp's Mineral Lands* 248; May 4, 1880, *id.* 292.

SEC. 391. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

17 Stat. 92; 19 *id.* 52; R. S. 2323. Tunnel Co. *vs.* Pell, 4 Colo. 507; Titcomb *vs.* Kirk, 51 Cal. 288. Decisions Com. G. L. O., Sept. 20, 1872, *Copp's Mineral Lands* 119; April 15, 1873, *id.* 135; Aug. 1, 1873, *id.* 144; Nov. 3, 1876, 3 *Copp's L. O.* 130; Aug. 31, 1877, *Copp's Mineral Lands* 237; Jan. 16, 1878, *id.* 239. Oct. 12, 1878, *id.* 249.

SEC. 392. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date

of the locations, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year: *Provided*, That the period within which the work required to be done annually on all unpatented claims, so located, shall commence on the first day of January succeeding the date of location of such claim. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars worth of labor shall be performed or improvements made by the first day of January, eighteen hundred and seventy-five, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the tenth day of May, eighteen hundred and seventy-two, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act. Upon a failure to comply with the foregoing conditions of annual expenditure, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made: *Provided*, That the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners, who have made the required expenditures.

17 Stat. 92; 18 *id.* 61, 315; 19 *id.* 52; 21 *id.* 61; R. S. 2324.

Location, Record, and Evidence: Campbell *vs.* Rankin, 9 Otto 261, *Copp's Mineral Lands* 353; Kinney *vs.* Con. Va. Mg. Co., 4 Saw. C. C. 382. Hibschle *vs.* Gildersleeve, U. S. Dist. Ct. Colo. 1880, in manuscript. Mallett *vs.* Uncle Sam Co., 1 Nev. 108; Van Valkenburgh *vs.* Huff, 1 *id.* 142; Chase *vs.* Savage Mg. Co., 2 *id.* 9; Rogers *vs.* Cooney, 7 *id.* 213; Phillpotts *vs.* Blasdell, 8 *id.* 61; Weill *vs.* Lucerne Co., 11 *id.* 200; Golden Fleece Co. *vs.* Cable Mg. Co., 12 *id.* 312; Gleason *vs.* Martin White Co., 13 *id.* 442; Roberts *vs.* Wilson, 1 Utah, 292; Connor *vs.* McPhee, 1 Montana, 73; King *vs.* Edwards, 1 *id.* 235; Bucher *vs.* Mulverhill, 1 *id.* 306; Territory *vs.* Lee, 2 *id.* 124; Moxon *vs.* Wilkinson, 2 *id.* 421; Murley *vs.* Ennis, 2 Colo. 300; Sullivan *vs.* Hense, 2 *id.* 424; Patterson *vs.* Hitchcock, 3 *id.* 533; Wolfley *vs.* Lebanon Co., 4 *id.* 112; Sears *vs.* Taylor, 4 *id.* 38; Hicks *vs.* Bell, 3 Cal. 219; Fairbanks *vs.* Woodhouse, 6 *id.* 433; Live Yankee Co. *vs.* Oregon Co., 7 *id.* 41; Packer *vs.* Heaton, 9 *id.* 569; McGarrity *vs.* Byington, 12 *id.* 431; Water Co. *vs.* Mooney, 12 *id.* 534; Pennsylvania Mg. Co. *vs.* Owens, 15 *id.* 135; Lombards *vs.* Ferguson, 15 *id.* 372; Gillan *vs.* Hutchinson, 16 *id.* 154; Roach *vs.* Gray, 16 *id.* 383; Attwood *vs.* Fricot, 17 *id.* 38; English *vs.* Johnson, 17 *id.* 108; Prosser *vs.* Parks, 18 *id.* 47; Gore *vs.* McBrayer, 18 *id.* 582;

Downing *vs.* Rankin, 19 *id.* 641; Tunnel Co. *vs.* Stranahan, 20 *id.* 198; Kelley *vs.* Taylor, 23 *id.* 11; Coleman *vs.* Clements, 23 *id.* 245; Maye *vs.* Tappin, 23 *id.* 306; Draper *vs.* Douglas, 23 *id.* 347; Cary *vs.* Campbell, 24 *id.* 634; St. John *vs.* Kidd, 26 *id.* 264; Morton *vs.* Solambo Mg. Co., 26 *id.* 527; Wilson *vs.* Cleveland, 30 *id.* 192; Hess *vs.* Winder, 30 *id.* 349; Patterson *vs.* Keystone Mg. Co., 30 *id.* 360; Tunnel Co. *vs.* Stranahan, 31 *id.* 387; King *vs.* Randlett, 33 *id.* 318; Pralus *vs.* Jefferson Mg. Co., 34 *id.* 559; Pralus *vs.* Pacific Mg. Co., 35 *id.* 30; Bell *vs.* Tunnel and Mg. Co., 36 *id.* 214; Bradley *vs.* Lee, 38 *id.* 362; Hastings *vs.* Devlin, 40 *id.* 358; Harvey *vs.* Ryan, 42 *id.* 626; Strang *vs.* Ryan, 46 *id.* 33; Meyers *vs.* Farquharson, 46 *id.* 190; Quirk *vs.* Tralk, 47 *id.* 453; McLaughlin *vs.* Powell, 50 *id.* 64; Titcomb *vs.* Kirk, 51 *id.* 288; Morenhaut *vs.* Wilson, 52 *id.* 226; Stone *vs.* Geyser, 52 *id.* 315; Holland *vs.* M. A. G. Mg. Co., 53 *id.* 149; Gelcich *vs.* Moriarity, 53 *id.* 217; Phœnix Co. *vs.* Lawrence, Myers *vs.* Spooner, S. C. Cal. 1880, in manuscript. Decision Sec. Int., April 1, 1875, *Copp's Mineral Lands* 181. Decisions Com. G. L. O., May 16, 1873, *id.* 138; Aug. 28, 1876, *id.* 213; June 13, 1876, 3 *Copp's L. O.* 50; Oct. 20, 1879, *Copp's Mineral Lands* 277.

Expenditures: Mt. Diablo Mg. Co. *vs.* Callison, 5 Saw. C. C. 439. Decisions Sec. Int., Sept. 4, 1872, *Copp's Mg. Dec.* 136; March 4, 1879, *Copp's Mineral Lands* 255. Decisions Com. G. L. O., March 11, 1875, Skidmore, 47; Jan. 6, 1878, 5 *Copp's L. O.* 134 (?); Aug. 20, 1879, G. L. O. Rep. 1879, p. 144, *Copp's Mineral Lands* 273; Sept. 12, 1879, G. L. O. Report, 1879, 143; Oct. 20, 1879, *Copp's Mineral Lands* 277; May 1, 1880, *id.* 292.

Abandonment and Forfeiture: Hibschle *vs.* Gildersleeve, U. S. Dist. Ct. Colo. 1880, in manuscript; Mallett *vs.* Uncle Sam Co., 1 Nev. 188; Oreamuno *vs.* Uncle Sam Co., 1 *id.* 215; Weill *vs.* Lucerne Co., 11 *id.* 200; King *vs.* Edwards, 1 Montana, 235; Atkins *vs.* Hendree, 1 Idaho, 107; Murley *vs.* Ennis, 2 Colo. 300; Fairbanks *vs.* Woodhouse, 6 Cal. 433; Davis *vs.* Butler, 6 *id.* 510; Ferris *vs.* Cooper, 10 *id.* 589; Waring *vs.* Crow, 11 *id.* 366; Gluckauf *vs.* Reed, 22 *id.* 468; Coleman *vs.* Clements, 23 *id.* 245; Richardson *vs.* McNulty, 24 *id.* 339; Wiseman *vs.* McNulty, 25 *id.* 230; St. John *vs.* Kidd, 26 *id.* 264; Depuy *vs.* Williams, 26 *id.* 309; Wilson *vs.* Cleveland, 30 *id.* 192; Bell *vs.* Tunnel and Mg. Co., 36 *id.* 214; Judson *vs.* Mulloy, 40 *id.* 300; Strang *vs.* Ryan, 46 *id.* 33; Morenhaut *vs.* Wilson, 52 *id.* 226; Myers *vs.* Spooner, S. C. Cal. 1880, in manuscript.

Relocations: Decisions Sec. Int., Nov. 6, 1873, *Copp's Mg. Dec.* 191 (?); May 22, 1878, 5 *Copp's L. O.* 50; June 29, 1878, 5 *id.* 66. Decisions Com. G. L. O., Sept. 25, 1873, *Copp's Mg. Dec.* 225; April 21, 1876, 3 *Copp's L. O.* 37; Dec. 13, 1878, *Copp's Mineral Lands* 252.

Transfers: Mining Co. *vs.* Taylor, 10 Otto, 37. Kinney *vs.* Con. Va. Mg. Co., 4 Saw. C. C. 382. Phillpotts *vs.* Blasdell, 8 Nev. 61; Weill *vs.* Lucerne Co., 11 *id.* 200; Sullivan *vs.* Hense, 2 Colo. 424; McCarron *vs.* O'Connell, 7 Cal. 152; Clark *vs.* McElroy, 11 *id.* 154; Jackson *vs.* Feather River Co., 14 *id.* 18; Attwood *vs.* Fricot, 17 *id.* 38; Tunnel Co. *vs.* Stranahan, 20 *id.* 198; Gatewood *vs.* McLaughlin, 23 *id.* 178; Antonie Co. *vs.* Ridge Co., 23 *id.* 219; Draper *vs.* Douglas, 23 *id.* 347; Patterson *vs.* Keystone Co., 23 *id.* 575; Richardson *vs.* McNulty, 24 *id.* 339; Cary *vs.* Campbell, 24 *id.* 634; Copper Hill Mg. Co. *vs.* Spencer, 25 *id.* 18; St. John *vs.* Kidd, 26 *id.* 264; Duryea *vs.* Burt, 28 *id.* 569; Hess *vs.* Winder, 30 *id.* 349; Patterson *vs.* Keystone Mg. Co., 30 *id.* 360; Goller *vs.* Fett, 30 *id.* 481; Settembre *vs.* Putnam, 30 *id.* 490; King *vs.* Randlett, 33 *id.* 318; Hardenburgh *vs.* Bacon, 33 *id.* 356; Blodgett *vs.* Potosi Mg. Co., 34 *id.* 227; Felger *vs.* Coward, 35 *id.* 650; Meyers *vs.* Farquharson, 46 *id.* 190. Decision Com. G. L. O., June 9, 1873, *Copp's Mineral Lands* 138.

Co-owners: The 420 Mg. Co. *vs.* The Bullion Co., 3 Saw. C. C. 634, *Copp's Mineral Lands* 357. Mallett *vs.* Uncle Sam Co., 1 Nev. 188; Chase *vs.* Savage Co., 2 *id.* 9; Bucher *vs.* Mulverhill, 1 Montana 306; Murley *vs.* Ennis, 2 Colo. 300; Waring *vs.* Crow, 11 Cal. 366; Gore *vs.* McBrayer, 18 *id.* 582; Rowe *vs.* Bacigalluppi, 21 *id.* 633; Coleman *vs.* Clements, 23 *id.* 245; Hughes *vs.* Devlin, 23 *id.* 501; Wiseman *vs.* McNulty, 25 *id.* 230; Morton *vs.* Solambo Co., 26 *id.* 527; Duryea *vs.* Burt, 28 *id.* 569; Goller *vs.* Fett, 30 *id.* 481; Settembre *vs.* Putnam, 30 *id.* 490; Jones *vs.* Clark, 42 *id.* 180; Taylor *vs.* Castle, 42 *id.* 367; Decker *vs.* Howell, 42 *id.* 636; Strang *vs.* Ryan, 46 *id.* 33. Decisions Com. G. L. O., July 19, 1876, 3 *Copp's L. O.* 66; June 9, 1877, *Copp's Mineral Lands* 234; Dec. 21, 1877, *id.* 239.

SEC. 393. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter,

having claimed and located a piece of land for such purposes, who has or have complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States Surveyor-General, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field-notes, notices and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States Surveyor-General that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the Register and the Receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter. Where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established; and this provision shall apply to all applications for patents to mineral lands pending on the twenty-second day of January, eighteen hundred and eighty.

17 Stat. 92; 19 *id.* 52; 21 *id.* 61; R. S. 2325.

Applications: Decisions Sec. Int., Nov. 6, 1873, *Copp's Mg. Dec.* 191; March 22, 1875, 2 *Copp's L. O.* 5; June 29, 1875, G. L. O. Rep. 1876, p. 78; Jan. 3, 1877, *Copp's Mineral Lands* 220. Decisions Com. G. L. O., Sept. 21, 1872, *id.* 120; Feb. 18, 1873, *id.* 122; March 24, 1873, *Copp's Mg. Dec.* 165; April 15, 1873, *id.* 188; Jan. 22, 1873, *id.* 157; Jan. 6, 1874, *Copp's Mineral Lands* 146; July 21, 1874, 1 *Copp's L. O.* 66; Aug. 18, 1874, *Copp's Mineral Lands* 158; Dec. 14, 1874, 1 *Copp's Land Owner* 146; Jan. 2, 1875, *Copp's Mineral Lands* 172; Feb. 18, 1873, *id.* 122; Aug. 17, 1875, *id.* 195; Nov. 12, 1875, *id.* 199; Dec. 20, 1875, 2 *Copp's L. O.* 146; April 29, 1876, *Copp's Mineral Lands* 208; April 20, 1877, *id.* 234; Oct. 20, 1879, *id.* 277.

Agents and Attorneys: Decision Sec. Int., March 2, 1880, *id.* 286. Decisions Com. G. L. O., Aug. 20, 1873, *Copp's Mg. Dec.* 222; Aug. 26, 1879, 6 *Copp's L. O.* 92; Sept. 19, 1879, G. L. O. Rep. 1879, p. 143; Oct. 20, 1879, 6 *Copp's L. O.* 122.

Expenditures: Mt. Diablo Mg. Co. *vs.* Callison, 5 Saw. C. C. 439. Weeks' Mg. Laws, 113, 115, 116, 118, 120, 121. Decisions Sec. Int., Sept. 6, 1878, 6 *Copp's L. O.* 100; June 23, 1879, *Copp's Mineral Lands* 259.

Notice: Wolfley *vs.* Lebanon Co., 4 Colo. 112. Decisions Sec. Int., Dec. 5, 1871, *Copp's Mg. Dec.* 70; Nov. 24, 1873, *id.* 169; April 30, 1874, *Copp's Mineral Lands* 151; Jan. 2, 1875, *id.* 172; April 1, 1875, *id.* 181; Dec. 1, 1876, *id.* 216. Decisions Com. G. L. O., June 19, 1871, *id.* 88; June 18, 1873, *id.* 140; Nov. 12, 1873, *Copp's Mg. Dec.* 234; July 21, 1874, 1 *Copp's L. O.* 66; Nov. 12, 1875, *Copp's Mineral Lands* 199; March 7, 1876, *id.* 205; April 29, 1876, *id.* 207; Dec. 1, 1876, *id.* 216; Jan. 4, 1877, *id.* 222; Aug. 26, 1879, 6 *Copp's L. O.* 92; Oct. 29, 1879; April 30, 1880.

Payment: Decision Com. G. L. O., Jan. 30, 1873, *Copp's Mg. Dec.* 157.

Protestants: Decisions Sec. Int., April 30, 1874, *Copp's Mineral Lands* 151; March 24, 1876, 4 *Copp's L. O.* 34; Feb. 17, 1877, *Copp's Mineral Lands* 222; March 10, 1877, 4 *Copp's L. O.* 3; July 21, 1879, *Copp's Mineral Lands* 263. Decisions Com. G. L. O., Aug. 17, 1874, 1 *Copp's L. O.* 82; Oct. 8, 1875, *Copp's Mineral Lands* 195.

Patents: Decisions Sec. Int., Jan. 14, 1873, *id.* 121; Jan. 2, 1875, *id.* 172; March 22, 1875, 2 *Copp's L. O.* 5; April 1, 1875, *Copp's Mineral Lands* 181; July 29, 1875, *id.* 194; July 21, 1879, *id.* 263. Decisions Com. G. L. O., Jan. 21, 1869, *id.* 82; July 22, 1869, *Copp's Mg. Dec.* 21; April 18, 1870, *Copp's Mineral Lands* 82; Jan. 2, 1872, *Copp's Mg. Dec.* 72; Feb. 27, 1872, *id.* 79; April 4, 1872, *Copp's Mineral Lands* 90; April 5, 1872, *id.* 92; Oct. 2, 1872, *Copp's Mg. Dec.* 146; March 8, 1873, *Copp's Mineral Lands* 123; July 26, 1873, *id.* 213; Oct. 22, 1873, *id.* 227; March 14, 1874, 1 *Copps L. O.* 2; June 22, 1875, 2 *id.* 98; Oct. 26, 1875, 2 *id.* 114; Dec. 20, 1875, 2 *id.* 146; Feb. 25, 1876, 2 *id.* 178; Jan. 15, 1880, 6 *id.* 171.

Right of Purchase: The 420 Mg. Co. *vs.* The Bullion Co., 3 Saw. C. C. 634, *Copp's Mineral Lands* 357; Chapman *vs.* Toy Long, 4 *id.* 28. Titcomb *vs.* Kirk, 51 Cal. 288.

Surveys: Decisions Sec. Int., May 22, 1878, 5 *Copp's L. O.* 50; Sept. 6, 1878, *Copp's Mineral Lands* 248; Aug. 2, 1880, 8 Wash. Law. Rep. 540; Aug. 16, 1880. Decisions Com. G. L. O., April 17, 1873, *Copp's Mineral Lands* 136; Sept. 11, 1873, *Copp's Mg. Dec.* 223; Jan 6, 1874, *Copp's Mineral Lands* 146; Nov. 5, 1874, *id.* 161; April 24, 1876, *id.* 206; Aug. 28, 1876, *id.* 213; April 10, 1877, 5 *Copp's L. O.* 51; Nov. 30, 1877, *Copp's Mineral Lands* 138; Oct. 20, 1879, *id.* 277; May 4, 1880, *id.* 292; June 17, 1880, 7 *Copp's L. O.* 51; Aug. 9, 1880, *Copp's Mineral Lands* 300.

SEC. 394. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim; and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the Register of the land office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the Receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the Register to the Com-

missioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Surveyor-general, whereupon the Register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.

17 Stat. 93; 19 *id.* 52. R. S. 2326. The Eureka Case, 4 Saw. C. C. 302. Golden Fleece Co. *vs.* The Cable Co., 12 Nev. 312; Sears *vs.* Taylor, 4 Colo. 38. Decisions Sec. Int., March 11, 1872, G. L. O. Rep. 1873, p. 43; May 27, 1872, G. L. O. Rep. 1873, p. 19; Feb. 24, 1873, *Copp's Mg. Dec.* 101; Oct. 28, 1873, *id.* 161; Aug. 9, 1874, 2 *Copp's L. O.* 98; Sept. 9, 1874, 1 *id.* 98; Jan. 2, 1875, 1 *id.* 178; March 22, 1875, 2 *id.* 5; Feb. 12, 1876, 2 *id.* 178; Dec. 26, 1876, 3 *id.* 162; Feb. 17, 1877, 3 *id.* 195; Feb. 17, 1877, G. L. O. Rep. 1877, p. 129; April 17, 1877, 4 *Copp's L. O.* 34; Jan. 3, 1877, 3 *id.* 196; July 14, 1877, 4 *id.* 66; Sept. 27, 1877, G. L. O. Rep. 1877, p. 135; May 21, 1879, 6 *Copp's L. O.* 73; June 25, 1879, G. L. O. Rep. 1879, p. 148; July 17, 1879, *id.* 145. Decisions Com. G. L. O., Dec. 29, 1871, *Copp's Mg. Dec.* 76; Jan. 14, 1873, *id.* 156; June 9, 1873, *id.* 202; Nov. 24, 1873, *id.* 145; July 21, 1874, 1 *Copp's L. O.* 66; Oct. 24, 1874, 1 *id.* 132; Dec. 14, 1874, 1 *id.* 146; May 12, 1876, 3 *id.* 36; Dec, 19, 1878, 5 *id.* 162; Sept. 12, 1879, 6 *id.* 105; Sept. 19, 1879, 6 *id.* 105; Feb. 28, 1880, 7 *id.* 50; April 15, 1880, 7 *id.* 51; June 28, 1880, 7 *id.* 50; July 15, 1880, 8 Wash. Law Rep. 461. [NOTE.—Important rulings above mentioned can be found by date under Part III. herein.—EDITOR.]

SEC. 395. The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with, or change the location of any such patented claim.

17 Stat. 94; 19 *id.* 52; R. S. 2327.

SEC. 396. Applications for patents for mining claims under former laws now pending, may be prosecuted to a final decision in the General Land Office; but in such cases, where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

17 Stat. 94; 19 *id.* 52; R. S. 2328.

SEC. 397. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

16 Stat. 217; R. S. 2329. Chapman *vs.* Toy Long, 4 Saw. C. C. 28. Moxon *vs.* Wilkinson, 2 Montana 421. Decisions Sec. Int., March 4, 1879 (Copp's Mineral Lands, 251). Decisions Com. G. L. O., Feb. 12, 1872 *id.* 89; April 28, 1873 *id.* 136; April 25, 1874, 1 Copp's L. O. 18.

SEC. 398. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

16 Stat. 217; R S. 2330. Campbell *vs.* Adams, U. S. Dist. Ct. Colo. 1880, in manuscript. Decisions Com. G. L. O., March 1, 1871, Copp's Mg. Dec. 40; Jan. 20, 1873, *id.* 157; July 10, 1873, *Copp's Mineral Lands* 144; Oct. 23, 1873, *id.* 145; Nov. 20, 1873, *id.* 146; Nov. 21, 1874, *id.* 164; Sept. 20, 1879, *id.* 276.

SEC. 399. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or pre-emption purposes.

17 Stat. 94; 19 *id.* 52; R. S. 2331. Campbell *vs.* Adams, U. S. Dist. Ct. Colo. 1880, in manuscript. Decisions Com. G. L. O., May 19, 1873, *Copp's Mineral Lands* 138; Aug. 27, 1873, *Copp's Mg. Dec.*, 222.

SEC. 400. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

16 Stat. 217; R. S. 2332. The 420 Mg. Co. *vs.* The Bullion Co., 3 Saw. C. C. 634, *Copp's Mineral Lands* 357; Davis *vs.* Clark, 2 Montana, 310; Maine Boys Co. *vs.* Boston Co., 37 Cal. 40.

SEC. 401. Where the same person, association, or corporation, is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the

provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section three hundred and eighty-eight, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim, which does not include an application for the vein or lode claim, shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

17 Stat. 94; 19 *id.* 52; R. S. 2333. Decisions Com. G. L. O., Oct. 17, 1873, *Copp's Mg. Dec.* 226.

SEC. 402. The Surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy-surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the Register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the Register and the Receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

17 Stat. 95; 19 *id.* 52; R. S. 2334. Decisions Com. G. L. O., Aug. 6, 1872, *Copp's Mineral Lands* 117.

SEC. 403. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the Register and Receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided, on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the Register of the land office as published nearest to the location of such land; and the Register shall require proof that such notice has been given.

17 Stat. 95; 19 *id.* 52; R. S. 2335. Decisions Com. G. L. O., July 21, 1874, 1 *Copp's Land Owner* 66; Jan. 27, 1876, *Copp's Mineral Lands* 205.

SEC. 404. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

17 Stat. 96; 19 *id.* 52; R. S. 2336. Decisions Sec. Int., Feb. 24, 1873, *Copp's Mineral Lands*, 97; July 21, 1879, *id.* 263. Decision Com. G. L. O., Feb. 25, 1876, 2 *Copp's Land Owner* 178.

SEC. 405. Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no locations hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.

17 Stat. 96; 19 *id.* 52; R. S. 2337. Decision Sec. Int., April 29, 1876, 3 *Copp's L. O.* 67 Decisions Com. G. L. O., Oct. 11, 1872, *Copp's Mineral Lands* 120; April 16, 1873, *Copp's Mg. Dec.* 193; May 20, 1873, *id.* 201; March 10, 1874, *Copp's Mineral Lands* 150; Oct. 21, 1875, *id.* 196; Sept 24, 1879, *id.* 277.

SEC. 406. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any state or territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

14 Stat. 252; 19 *id.* 52; R. S. 2338.

SEC. 407. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

14 Stat. 253; R. S. 2339. Atchison *vs.* Peterson, 20 Wall. 507; Basey *vs.* Gallagher, 20 *id.* 670; Jennison *vs.* Kirk, 8 Otto 453, *Copp's Mineral Lands* 389. Decisions Com. G. L. O., Nov. 23, 1869, *Copp's Mg. Dec.* 24; April 16, 1871, *Copp's Mineral Lands* 86; March 21, 1872, *id.* 90.

SEC. 408. All patents granted, or pre-emptions or homesteads allowed. shall be subject to any vested and accrued water-rights, or rights to

ditches and reservoirs used in connection with such water-rights, as may have been acquired under or recognized by the preceding section.

16 Stat. 218; R. S. 2340.

SEC. 409. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter eight, relating to "Homesteads."

14 Stat. 253; R. S. 2341. Ah Yew *vs.* Choate, 24 Cal. 562; Alford *vs.* Barnum, 45 *id.* 482. Decisions Sec. Int., Feb. 12, 1872, *Copp's Mg. Dec.* 77; May 6, 1872, *id.* 93; July 10, 1872, *id.* 128, 130; Dec. 14, 1872, *id.* 133; Jan. 3, 1876, 2 *Copp's L. O.* 146; Feb. 5, 1876, 2 *id.* 180; 3 *id.* 2; Dec. 20, 1876, 4 *id.* 102; April 5, 1877, 4 *id.* 19; June 21, 1877, 5 *id.* 3; Feb. 16, 1878, 5 *id.* 3; March 4, 1879, 6 *id.* 4; Dec. 22, 1879, 7 *id.* 23; April 7, 1880, 7 *id.* 36. Decisions Com. G. L. O., Nov. 14, 1872, *Copp's Mg. Dec.* 148; Oct. 21, 1871, *id.* 60; Dec. 2, 1872, *id.* 150; March 12, 1873, *id.* 163; July 10, 1873, *id.* 208; Nov. 11, 1873, *id.* 233; Aug. 4, 1875, 2 *Copp's L. O.* 84; Feb. 18, 1875, 1 *id.* 180; June 21, 1876, 3 *id.* 50; Oct. 24, 1876, 3 *id.* 130; March 21, 1877, 4 *id.* 2; March 26, 1877, 4 *id.* 17; Nov. 6, 1879, 6 *id.* 135. Cir. G. L. O. April 22, 1880, 7 *Copp's L. O.* 36. [Note.—Important decisions above mentioned can be found by date in Part III. herein.—EDITOR.]

SEC. 410. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

14 Stat. 253; R. S. 2342. Ah Yew *vs.* Choate, 24 Cal. 562; Alford *vs.* Barnum, 45 *id.* 482. Decisions Sec. Int., Feb. 12, 1872, *Copp's Mg. Dec.* 77; May 6, 1872, *id.* 93; July 10, 1872, *id.* 128, 130; Dec. 14, 1872, *id.* 133; Jan. 3, 1876, 2 *Copp's L. O.* 146; Feb. 5, 1876, 2 *id.* 180; 3 *id.* 2; Dec. 20, 1876, 4 *id.* 102; April 5, 1877, 4 *id.* 19; June 21, 1877, 5 *id.* 2; Feb. 16, 1878, 5 *id.* 3; March 4, 1879, 6 *id.* 4; Dec. 22, 1879, 7 *id.* 23; April 17, 1880, 7 *id.* 36. Decisions Com. G. L. O., Nov. 14, 1872, *Copp's Mg. Dec.* 148; Oct. 21, 1871, *id.* 60; Dec. 2, 1872, *id.* 150; March 12, 1873, *id.* 163; July 10, 1873, *id.* 208; Nov. 11, 1873, *id.* 233; Aug. 4, 1875, 2 *Copp's L. O.* 84; Feb. 18, 1875, 1 *id.* 180; June 21, 1876, 3 *id.* 50; Oct. 24, 1876, 3 *id.* 130; March 21, 1877, 4 *id.* 2; March 26, 1877, 4 *id.* 17; Nov. 6, 1879, 6 *id.* 135. Cir. G. L. O., April 22, 1880, 7 *Copp's L. O.*, 36. [Note.—Important rulings above referred to can be found, by date, in Part III. herein.—EDITOR.]

SEC. 411. The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

14 Stat. 252; R. S. 2343.

SEC. 412. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges, to aid in the construction of a draining and exploring tunnel to the Com-

stock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

16 Stat. 218; 17 *id.* 76; 19 *id.* 52; R. S. 2344. Decisions Sec. Int., Aug. 30, 1878, *Copp's Mineral Lands* 243. Decisions Com. G. L. O., March 8, 1873, *id.* 123; March 29, 1873, *Copp's Mg. Dec.* 179; May 27, 1876, 3 *Copp's L. O.* 34.

SEC. 413. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona fide entries of such lands within the States named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of preemption, as other public lands.

17 Stat. 465; R. S. 2345. Decisions Com. G. L. O., July 21, 1876, 3 *Copp's L. O.* 132.

SEC. 414. Within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral, are excluded from the operation of the preceding sections of this chapter, and all lands in said States shall be subject to disposal as agricultural lands.

19 Stat. 52.

SEC. 415. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States; unless otherwise specially provided in the act or acts making the grant; and all mineral lands are excepted from the operation and grants of laws heretofore granting lands to the State of Colorado.

13 Stat. 576; 18 *id.* 476; R. S. 2346. Heydenfeldt *vs.* Mg. Co., 3 Otto 634, *Copp's Mineral Lands* 376; Boggs *vs.* Merced Mg. Co., 14 Cal. 279; Burdge *vs.* Smith, 14 *id.* 380; Doran *vs.* Railway Co., 24 *id.* 452; Higgins *vs.* Houghton, 25 *id.* 252; McLaughlin *vs.* Powell, 50 *id.* 64. Decisions Sec. Int., May 20, 1870, *Copp's Mineral Lands* 82; April 28, 1873; April 30, 1879. Decisions Com. G. L. O., Feb. 5, 1879, 5 *Copp's L. O.* 178; Dec. 19, 1879, *Copp's Mineral Lands* 279. Section 416 to 421 relate to coal lands. Section 416 is identical with section 2347 R. S., 417 with 2348, 418 with 2349, 419 with 2350, 420 with 2351, and 421 with 2352. References are: Stroud *vs.* Railway, 4 Dillon 396; 4 *Copp's L. O.* 170, and the department decisions on pp. 325 to 334 herein.

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